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ELECTIONS Georgia Ethics in Government Act: Amend the Georgia Ethics in Government Act so as to Provide for the Comprehensive Revision of Provisions Regarding Ethics and Conflicts of Interest; Provide for and Change Certain Definitions; Change Certain Provisions Relative to Declaration of Policy; Provide for the Timely Issuance of Advisory Opinions by the State Ethics Commission and Other Matters Relative to Advisory Opinions; Change Provisions Relating to the State Ethics Commission Including Its Administrative Attachment to the Secretary of State's Office; Change Provisions Relating to

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Ability to Serve as a Public Employee; Create Conflict of Interest Provisions Relating to Gifts; Provide Restrictions for Lobbyists Relating to Presence on the Floor of the House and Senate; Provide for Candidates for the General Assembly Who File a Declaration of Intent to Accept Campaign Contributions to Receive and Choose to Sign a Pledge to Engage in Ethical Campaigning; Provide for Actions for Slander and Libel and the Commission's Authority Over This Activity; Correct Cross-References; Provide for Criminal Penalties; Change Provisions Relative to Appearances Before the Board of Pardons and Paroles by Members of the General Assembly or State Elected or Appointed Officials; Change Certain Provisions Relating to Complaints or Information Regarding Fraud, Waste, and Abuse in State Programs and Operations; Change Certain Provisions Relating to the Code of Ethics for Members of Boards, Commissions, and Authorities; Change Provisions Relating to a Board, Commission, or Authority's Authority to Enact Rules and Regulations; Provide for Restrictions on Activities for Persons Who Were Members, Employees, or Appointees of the Legislative,

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ELECTIONS

Georgia Ethics in Government Act: Amend the Georgia Ethics in Government Act so as to Provide for the Comprehensive Revision of Provisions Regarding Ethics and Conflicts of Interest; Provide for and Change Certain Definitions; Change Certain Provisions Relative to Declaration of Policy; Provide for the Timely Issuance of Advisory Opinions by the State Ethics Commission and Other Matters Relative to Advisory Opinions; Change Provisions Relating to the State Ethics Commission Including Its Administrative Attachment to the Secretary of State's Office; Change Provisions Relating to Mailing Complaints; Provide for Rule Making with Regard to Technical Defects and the Time Frame for Correction of Technical Defects in Financial Disclosure Statements; Change Certain Provisions Regarding Connected Organizations; Create Certain Restrictions on Receipt or Award of State Contracts; Change Certain Provisions Regarding Contributions Made to Candidates and the Location Where Certain Reports Are Filed; Change Certain Provisions Relating to Contributions of Expenditures Other than Through Candidates or Campaign Committees and Disclosure of Extensions of Credit; Change Certain Provisions Regarding Disclosure Reports; Change Certain Provisions Relating to Disposition of Campaign Contributions; Change Certain Provisions Regarding Electronic Filing of Reports; Change Certain Provisions Relating to Acceptance of Campaign Contributions During Legislative Sessions; Change Certain Provisions Relating to Filing of Financial Disclosure Statements; Change Provisions Relating to Filing by Mail; Change Certain Provisions Relating to Lobbyist Registration; Change Provisions Relating to Lobbyist Disclosure Reports, the Contents Thereof, and the Definition of Lobbyist; Create Provisions Relating to a Lobbyist's Eligibility for Certain Appointments and Ability to Serve as a Public Employee; Create Conflict of Interest Provisions Relating to Gifts; Provide Restrictions for Lobbyists Relating to Contingency Agreements; Provide for Restrictions for Lobbyists Relating to Presence on the Floor of the House and Senate; Provide for Candidates for the General Assembly Who File a Declaration of Intent to Accept Campaign Contributions to Receive

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BILL NUMBER:

SB 517

SUMMARY:

Had it passed, SB 517 would have revised the Georgia Ethics in Government Act to provide provisions governing campaign contributions, lobbyist registration, gifts from lobbyists, disclosure of lobbyists' income, legislators' ability to influence the State Board of Pardons and Paroles, and minimum waiting periods before a government employee can register as a lobbyist.

History

Some believe that Georgia “ha[s] some of the weakest ethics rules in the country.”¹ There is good reason for this perception: The administrations of both Governor Perdue and his predecessor, Roy Barnes, faced allegations of ethics violations.² Statistics also help to explain why some consider Georgia weak on ethics. According to a study by the Better Government Association that measured “the relative strength of existing laws that promote integrity,” Georgia ranks only 26th among the 50 states with a grade of 46%.³ Georgia falls short, however, when one considers the detailed rankings addressing specific categories of laws.⁴ With respect to laws regulating monetary contributions to political campaigns, Georgia ranks only 35th, with a grade of 37%.⁵ With respect to laws designed to prevent conflicts of interest in government, Georgia ranks only 33rd, with a grade of 49%.⁶ With respect to laws limiting the soliciting, offering, or accepting of gifts, trips, and honoraria, Georgia ranks 9th, but the State’s grade was only 46%.⁷ Other studies indicate that Georgia’s current ethics laws fail to get the job done, ranking 17th but passing by only three points with a score of 63% in a study measuring lobby-disclosure laws.⁸

The Georgia General Assembly last made changes to the Ethics in Government Act in 1992, and these changes form “the base for Georgia’s existing Ethics in Government Law.”⁹ The most important changes included in the 1992 legislation were major reductions in

1. Editorial, *Our Opinions: Georgia Ethics Legislation: Do It Right; Do It Right Now*, ATLANTA J. CONST., Mar. 9, 2004, at A12, available at 2004 WL 68887353 [hereinafter *Georgia Ethics Legislation*].

2. See Alan Judd, *Ethics Reform Future in Doubt*, ATLANTA J. CONST., Mar. 13, 2003, at D1, available at 2003 WL 13244956; Dave Williams, *Lawmakers Set to Move on Ethics Legislation: Reform Among Perdue Priorities*, FLA. TIMES-UNION, Jan. 27, 2003, at B1, available at 2003 WL 8369864.

3. THE BETTER GOVERNMENT ASSOCIATION, THE BGA INTEGRITY INDEX 1-2 (2002), available at http://www.bettergov.org/pdfs/IntegrityIndex_10.22.02.pdf [hereinafter BGA INTEGRITY INDEX].

4. *Id.* at 30.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Hired Guns: Nationwide Ranking*, The Center for Public Integrity, <http://www.publicintegrity.org/hiredguns/nationwide.aspx> (May 15, 2003).

9. Rhonda Cook, *Perdue Details Vision for Legislators’ Ethics*, ATLANTA J. CONST., Jan. 17, 2003, at C1, available at 2003 WL 8963542.

campaign contribution limits, disclosure requirements for lobbyists, limits on honoraria as well as gifts from lobbyists for legislators, and funding changes for the State Ethics Commission.¹⁰

To correct the negative perception surrounding Georgia's ethics laws, the administration and, more specifically, newly elected Governor Sonny Perdue, has tried for the past two years—to no avail—to pass ethics reform in the Georgia General Assembly.¹¹ However, Governor Perdue has already implemented the proposed reforms on most state employees through an executive order he issued during his first day in office.¹²

The purpose of Georgia's ethics laws is to maintain and enforce the independence, fairness, accountability, democratic leadership, and respectability of those who represent the public in government.¹³ More specifically, the ethics laws follow the money to “provide a level political playing field, where those possessing economic power are unable to bully those who lack it.”¹⁴

Some of the changes proposed by Governor Perdue and his supporters during the 2003 legislative session included giving the State Ethics Commission broader jurisdiction to cover “conflicts of interest,” requiring certain vendor representatives to register as lobbyists when seeking state contracts, increasing the financial disclosure requirements for public officials, and imposing a one-year waiting period on government officials who want to become lobbyists.¹⁵ Early in the session, it appeared as though both sides of the General Assembly supported the legislation.¹⁶ However, the 2003 session ultimately left Georgia without ethics reform.¹⁷

10. Norma Wagner, *Ethics Bill Signals New Era*, ATLANTA J. CONST., Apr. 1, 1992, at A12, available at 1992 WL 4582806.

11. See Editorial, *Our Opinions: Don't Close Legislative Shop Without Tough Ethics Law*, ATLANTA J. CONST., Apr. 5, 2004, at A10, available at 2004 WL 73419949 [hereinafter *Don't Close Legislative Shop*].

12. See Dave Williams, *Perdue Plots Ethics Reforms: Public Trust Must Be Rebuilt, Governor Says*, FLA. TIMES-UNION, Jan. 17, 2003, at B1, available at 2003 WL 8369104 [hereinafter *Perdue Plots*].

13. See David Ensign, *Reforming Public Integrity Laws in an Era of Declining Trust*, in THE COUNCIL OF STATE GOVERNMENTS: BOOK OF STATES 1996-1997 477 (1996-1997).

14. Martin H. Redish, *Campaign (F)laws Contribution Limits Equal Communications Void*, FULTON COUNTY DAILY REP., Aug. 6, 2001, at 9, available at 8/6/2001 Daily FULTONDAILY 9.

15. See *Perdue Plots*, supra note 12.

16. See *id.*

17. See Alan Judd, *Ethics Reform Flops: Lawmakers Toil on Flag, Budget*, ATLANTA J. CONST., Apr. 26, 2003, at A1, available at 2003 WL 19315288 [hereinafter *Reform Flops*].

The 2003 bill's failure was not due to a lack of effort. Supporters in the House put many hours into the ethics reform bill and produced a bill that was "fair to citizen legislators and to the public."¹⁸ Both parties blamed each other for the failure of ethics reform in the 2003 legislative session.¹⁹ Some believe Governor Perdue's administration lost "credibility on the issue" by proposing a provision that would have allowed him to replace all of the board members on the State Ethics Commission at one time.²⁰ The House Committee stripped that language from the bill.²¹ In the end, many say that it was the "Old Guard"—incumbents who have a "built-in advantage" because of their "ability to raise campaign money,"—who killed the reform efforts.²² Thus, the 2004 Georgia General Assembly would determine the fate of ethics reform in Georgia.²³ Accordingly, despite his failure to pass meaningful ethics-reform legislation in 2003, Governor Perdue once again proposed ethics reform during the 2004 legislative session.²⁴

Bill Tracking of SB 517

Consideration by the Senate

Senators Preston Smith, Daniel Lee, David Shafer, Hugh Gillis, and Terrell Star of the 52nd, 29th, 48th, 20th, and 44th districts, respectively, sponsored SB 517.²⁵ The bill, as introduced, proposed numerous changes that related to campaign finance and to enforcement by the State Ethics Commission.²⁶ Some of the major changes included increases in fines for violations of ethics laws, transfer of filing disclosure statements from the Secretary of State to the State Ethics Commission, conditions for Ethics Commission

18. Telephone Interview with Rep. Larry Walker, House District No. 115 (May 19, 2004).

19. Dave Williams, *Accusations Fly Over Ethics-Bill Failure*, AUGUSTA CHRON., Apr. 30, 2003, at B7, available at 2003 WL 18312659.

20. *Id.*

21. *Id.*

22. *See id.*; *Perdue Plots*, *supra* note 12.

23. *See* Dick Pettys, *A Session Like No Other Draws to an End*, MACONTELEGRAPH.COM, at <http://www.macon.com/mld/macon/news/local/5117593.htm> (Apr. 25, 2003).

24. *See* Ben Smith, *Legislature 2004: Perdue Ethics Bill Returns Monday, Deadline Nears for Approval in this Session*, ATLANTA J. CONST., Mar. 14, 2004, at F4, available at 2004 WL 73417079.

25. *Id.*

26. *Id.*

members to recuse themselves from an investigation, prohibition of promises by campaigning public officials to award state contracts to those who made campaign contributions to the official, and defining the term “gift” as items over \$50 in value.²⁷

The Senate first read SB 517 on February 13, 2004, and the Senate President assigned it to the Senate Ethics Committee on the same day.²⁸ The Senate read it a second time on February 19, 2004, and the Senate Committee favorably reported on the bill, by substitute.²⁹ On February 23, 2004, with the Senate scheduled to debate the bill on the floor, numerous legislators proposed amendments, and Senate leaders recommitted the bill to the Senate Ethics Committee in an effort to avoid “hashing out the changes on the floor.”³⁰ The Senate Committee favorably reported on the bill with a second substitute on March 9, 2004.³¹

The second Committee substitute would have expanded the definition of “lobbyist” to include “[a]ny natural person who, for compensation, either individually or as an employee of another person undertakes to *promote or oppose* the promulgation of administrative rules or regulations by any state agency.”³² It would have also added an electronic filing requirement for lobbyist disclosure reports and a requirement that lobbyists disclose the regulations that they promoted or opposed and the regulations for which they made expenditures to support or oppose.³³

Floor Amendments

Once SB 517 reached the Senate floor for debate, Senators proposed and passed numerous amendments, making “the measure

27. *See id.*

28. *See* State of Georgia Final Composite Status Sheet, SB 517, Feb. 13, 2004 (May 19, 2004).

29. *See* State of Georgia Final Composite Status Sheet, SB 517, Feb. 19, 2004 (May 19, 2004); SB 517 (SCS1), 2004 Ga. Gen. Assem.

30. *See* State of Georgia Final Composite Status Sheet, SB 517, Feb. 23, 2004 (May 19, 2004); Dave Williams, *Ethics-in-Government Reform Sees Little Progress This Year*, AUGUSTA CHRON., at B9, Feb. 29, 2004, available at 2004 WL 69188658.

31. State of Georgia Final Composite Status Sheet, SB 517, Mar. 9, 2004 (May 19, 2004); SB 517 (SCS2), 2004 Ga. Gen. Assem.

32. *Compare* SB 517 (SCS2), 2004 Ga. Gen. Assem., with SB 517, as introduced, 2004 Ga. Gen. Assem. (emphasis added).

33. *Compare* SB 517 (SCS2), 2004 Ga. Gen. Assem., with SB 517, as introduced, 2004 Ga. Gen. Assem.

. . . strict and potentially unconstitutional.”³⁴ Senator Charles Clay of the 37th district offered floor amendment 1, which he subsequently withdrew.³⁵ Senators Steve Thompson of the 33rd district and Sam Zamarripa of the 36th district offered floor amendment 2.³⁶ This amendment provided for the distribution of campaign contributions in excess of funds necessary to defray expenses.³⁷ Senators George Hooks, Terrell Starr, Hugh Gillis, Seth Harp, Dan Moody, and Faye Smith of the 14th, 44th, 20th, 16th, 27th and 25th districts, respectively, offered amendment 3 to the Committee substitute.³⁸ The amendment proposed distributing a “Pledge to Engage in Ethical Campaigning” to all persons running for the General Assembly.³⁹ The amendment provided that the State Ethics Commission could investigate and issue orders for alleged violations by candidates who signed the pledge.⁴⁰ Senators Charles Clay, David Adelman, Robert Lamutt, Don Cheeks, Jack Hill, and Casey Cagle, of the 37th, 42nd, 21st, 23rd, 4th and 49th districts, respectively, offered amendment 4.⁴¹ Amendment 4 proposed a requirement that lobbyists provide a good faith estimate of all income received from those for whom they lobby.⁴²

Senators Michael Meyer von Bremen of the 12th district and George Hooks of the 14th district offered floor amendment 5.⁴³ This amendment proposed holding candidates liable for defamation committed by their campaign committee if the candidate willfully and knowingly permitted the slander.⁴⁴

Senator Adelman offered amendment 6.⁴⁵ This amendment would have banned *all* gifts from lobbyists to public officers; the earlier

34. Ben Smith, *Legislature 2004: Amendments Put Ethics Bill in Danger*, ATLANTA J. CONST., at D1, Mar. 16, 2004, available at 2004 WL 73417304.

35. See Withdrawn Senate Floor Amendment to SB 517, introduced by Sen. Charles Clay, Mar. 15, 2004.

36. See SB 517 (SFA2), 2004 Ga. Gen. Assem.

37. See *id.*

38. See SB 517 (SFA3), 2004 Ga. Gen. Assem.

39. See *id.*

40. See *id.*

41. See SB 517 (SFA4), 2004 Ga. Gen. Assem.

42. See *id.*

43. See SB 517 (SFA5), 2004 Ga. Gen. Assem.

44. See *id.*

45. See SB 517 (SFA6), 2004 Ga. Gen. Assem.

versions of the bill had allowed gifts up to \$50.⁴⁶ Senators Nadine Thomas of the 10th district and Terrell Starr of the 44th district offered floor amendment 7.⁴⁷ This added a “Code of Ethics for Government Service” section to the bill.⁴⁸ It would have also granted the State Ethics Commission power to investigate “any false, dishonest, or misleading statements made by public officers . . . in the course of [their] official duties.”⁴⁹

During the floor debate, Senator Preston Smith expressed concern over the constitutionality of amendments 3, 5, and 7; the Senator argued that each amendment would have potentially limited the speech of legislators and would have placed enforcement of those limitations in the hands of the State Ethics Commission rather than in the hands of the courts.⁵⁰ Senator Hooks challenged Senator Smith’s claim that the amendments concerning ethical campaigning would have been unconstitutional.⁵¹ Senator Hooks stated that there was case law from Massachusetts, North Carolina, Virginia, and California upholding similar laws in those states.⁵² Senators Meyer von Bremen and Cheeks also challenged Senator Smith’s concerns over the constitutionality of the amendments.⁵³

Turning to amendment 6, Senator Smith implied that it was a “poison pill.”⁵⁴ The Senator argued that, although the Governor wanted to place “reasonable” limits on gifts from lobbyists to public officers, the administration would not oppose the amendment if it passed.⁵⁵ He expressed doubt that the House would accept the provision.⁵⁶

Senators Gloria Butler, Nadine Thomas, and Michael Meyer von Bremen, of the 55th, 10th, and 12th districts, respectively, offered

46. Compare SB 517 (SFA6), 2004 Ga. Gen. Assem., with SB 517, as introduced, 2004 Ga. Gen. Assem.

47. See SB 517 (SFA7), 2004 Ga. Gen. Assem.

48. See *id.*

49. *Id.*

50. Audio Recording of Senate Proceedings, Mar. 15, 2004 (remarks by Sen. Preston Smith), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html [hereinafter Senate Audio].

51. See *id.* (remarks by Sen. George Hooks).

52. See *id.*

53. See *id.* (remarks by Sens. Michael Meyer von Bremen and Don Cheeks).

54. See *id.* (remarks by Sen. Preston Smith); Telephone Interview with Sen. Mike Crotts, Senate District No. 17 (May 26, 2004) (stating that the floor amendments demonstrated political game-playing).

55. See *id.*

56. See Senate Audio, *supra* note 50.

floor amendment 8.⁵⁷ This amendment proposed preventing the appointment of lobbyists for one year following the expiration of the lobbyist's registration "to any state office, board, authority, commission, or bureau" that regulates the activities of a firm on whose behalf they had lobbied.⁵⁸ Objecting to amendment 8, Senator Smith stated that the amendment was impracticable because all executive branch employees that either lobby the legislature or work as legislative liaisons must register as lobbyists; the amendment, according to Smith, would have prevented these people from holding public office or from accepting compensation for their work.⁵⁹

Senators David Adelman, Steve Henson, Horacena Tate, and Connie Stokes, of the 42nd, 41st, 38th, and 43rd districts, respectively, offered floor amendment 9.⁶⁰ This amendment would have prevented the filling of "a vacancy on any board, council, or commission or on the Supreme Court, the Court of Appeals, the superior courts, or the state courts" with a contributor of the Governor's campaign for 120 days.⁶¹ Senator Smith also spoke to amendment 9 during the floor debate, stating that it was impractical because there had been over 1400 vacancies on boards, commissions, and authorities since the Governor took office.⁶² Senator Smith believed that it was almost impossible to fill all of these vacancies (the previous Governor had been unable to do so) and that further limiting the pool of potential nominees made the task "an administrative nightmare."⁶³

Senator Thomas Price of the 56th district offered amendment 10, and Senator Cheeks offered floor amendment 10A.⁶⁴ These amendments proposed preventing any candidate for public office from soliciting or receiving any contribution or gift from a lobbyist.⁶⁵ Senators posed questions to Senator Price concerning the constitutionality of amendment 10, leading the Senator to clarify that the amendment would have prohibited legislators from soliciting

57. See SB 517 (SFA8), 2004 Ga. Gen. Assem.

58. *Id.*

59. Senate Audio, *supra* note 50.

60. See SB 517 (SFA9), 2004 Ga. Gen. Assem.

61. *See id.*

62. See Senate Audio, *supra* note 50.

63. *Id.*

64. See SB 517 (SFA10), 2004 Ga. Gen. Assem.; SB 517 (SFA10A), 2004 Ga. Gen. Assem.

65. *See id.*

contributions from lobbyists but not from accepting these contributions.⁶⁶ Senator Smith also addressed amendments 10 and 10A during his closing statements of the floor debate by calling them poison pills.⁶⁷

Despite Senator Smith's opposition to the bill's amendments, he encouraged the Senate to adopt the legislation because he believed that it would "change the culture of [] government" and would alter the enforcement of ethics regulations.⁶⁸ Senator René Kemp of the 3rd district and Senator Liane Levetan of the 40th district also encouraged the adoption of the bill during the floor debate, Senator Kemp referencing the provisions that provided protection for public whistleblowers and Senator Levetan stating that the bill's provisions "[would] make Georgia a state that recognizes that we need to be beyond reproach."⁶⁹

Passage by the Senate

Following the floor debate on March 15, 2004, the Senate adopted the Senate Committee substitute, adopted all of the floor amendments except the withdrawn amendment, and passed SB 517, as amended, by a vote of 52 to 0.⁷⁰ The Senate then transmitted SB 517 to the House for consideration.⁷¹

Consideration by the House

The House read SB 517 for the first time on March 17, 2004, and the Speaker assigned the bill to the House Judiciary Committee.⁷² The House Committee favorably reported on the bill, by substitute, on April 1, 2004.⁷³

The major changes made by the House Committee included limiting the proposed definition of a "gift" to "anything of value

66. See Senate Audio, *supra* note 50 (remarks by Sen. Thomas Price).

67. *Id.* (remarks by Sen. Preston Smith).

68. *Id.* Senator Smith stated that the bill would be a major expansion of ethics laws. *Id.*

69. *Id.* (remarks by Sens. Jack Kemp and Liane Levetan).

70. Georgia Senate Voting Record, SB 517 (Mar. 15, 2004).

71. See State of Georgia Final Composite Status Sheet, SB 517, Mar. 15, 2004 (May 19, 2004).

72. See State of Georgia Final Composite Status Sheet, SB 517, Mar. 17, 2004 (May 19, 2004).

73. State of Georgia Final Composite Status Sheet, SB 517, Apr. 1, 2004 (May 19, 2004).

exceeding \$50.00,” deleting the section of the bill that would have required the disclosure of lobbyists’ income, and deleting the section on slander.⁷⁴ Additionally, the House Committee substitute required disclosure of income from consultations with clients in certain fields that exceeded \$10,000, and it eliminated the Senate floor amendment that would have limited the transfer of campaign contributions.⁷⁵ The House Committee substitute replaced the amendment with a provision that would have restricted the transfer of excess campaign contributions to “\$5,000 per election cycle to a national, state, or local committee of any political party or for transferal to any candidate.”⁷⁶ Additionally, the House Committee substitute would have made several changes, including the following: limiting the contributions that one can make to a political party to \$5,000; requiring the disclosure of businesses in which a public official or candidate’s spouse or dependant children has an interest if this interest is more than 5% of the total interest or if the net fair market value exceeds \$20,000; and requiring the disclosure of businesses for which a public official or candidate’s spouse or dependent children serve as an officer, director, equitable partner, or trustee.⁷⁷

Despite the numerous changes that SB 517 underwent in the House Judiciary Committee, the House never debated the bill, and it failed to pass during the 2004 legislative session.⁷⁸

Analysis

Lobby Reform

Legislators introduced SB 517 to preserve the public’s confidence in the governmental process.⁷⁹ The comprehensive bill, as passed by the Senate, would have prevented a lobbyist from giving a gift to any

74. Compare SB 517 (HCS), 2004 Ga. Gen. Assem., with SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

75. Compare SB 517 (HCS), 2004 Ga. Gen. Assem., with SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

76. Compare SB 517 (HCS), 2004 Ga. Gen. Assem., with SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

77. Compare SB 517 (HCS), 2004 Ga. Gen. Assem., with SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

78. See State of Georgia Final Composite Status Sheet, SB 517, Apr. 7, 2004 (May 19, 2004).

79. See generally Telephone Interview with Bill Bozarth, Executive Director, Common Cause Georgia (May 12, 2004) [hereinafter Bozarth Interview].

public officer or employee.⁸⁰ Additionally, the bill, as passed by the Senate, would have prevented the appointment of lobbyists “to any state office, board, authority, commission, or bureau . . . which regulates the activities of [an organization] that the lobbyist represented until one year after the expiration of the lobbyists registration.”⁸¹ The bill would have instituted an “ethical campaign” pledge and a system for enforcing the pledge by the State Ethics Commission.⁸² Furthermore, the bill, as passed by the Senate, provided that “a candidate is liable for any slander or libel . . . committed by a campaign committee that is controlled by that candidate if the candidate willfully and knowingly directs or permits the libel or slander.”⁸³ The bill would have also prevented public officials from contacting members of the Board of Pardons and Parole “with respect to a person under the jurisdiction of the board,” and it would have created protections for whistleblowers from retaliation by public officials.⁸⁴

Although Georgia’s current ethics laws leave it below average when compared to other states, some of Georgia’s current provisions are stronger than other states’ laws.⁸⁵ The degree of disclosure required by current Georgia laws and the strength of enforcement allowed by the State Ethics Commission are among the factors that place Georgia in the bottom half of states in terms of ethics.⁸⁶ The bill, had it passed, would have had enormous implications on a range of behaviors, both by public officials and by lobbyists.⁸⁷ This bill would have affected not only the relationship between lobbyists and legislators, but also the public’s perception of this relationship.⁸⁸

However, the legislation, as passed by the Senate, would have raised legal issues that may have led courts to strike down portions of the bill.⁸⁹ Floor amendment 3 proposed that candidates for the

80. SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. See Bozarth Interview, *supra* note 79.

86. See *id.*

87. See Ben Smith, *Ethics Reform Slow to Take Root: No Public Outcry, Advocates Say*, ATLANTA J. CONST., Mar. 29, 2004, at A1, available at 2004 WL 73419118.

88. See *id.*

89. See Senate Audio, *supra* note 50.

General Assembly sign a campaign pledge form; the Secretary of State's office would have maintained a list on its website of candidates who did not sign or acknowledge the pledge.⁹⁰ The proposed pledge included a commitment "not [to] use or permit the use of character defamation, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life, nor [] use or permit on [the candidate's] behalf misleading or untrue advertisements."⁹¹ The State Ethics Commission would have handled enforcement of complaints resulting from the possible violation of this pledge.⁹² This amendment would potentially limit political speech, and the Supreme Court has held that political speech is "at the very center of the First Amendment."⁹³ The First Amendment does not protect all speech—libel and slander are actionable.⁹⁴ However, the pledge would have limited "scurrilous attacks on any candidate," without defining what constitutes a "scurrilous attack"; one could conceivably construe questioning a candidate's stance on a controversial issue, allegations of official improprieties, and evidence of who has backed or contributed to a candidate's campaign as "scurrilous attacks."⁹⁵

This language may have also been open to a First Amendment attack on the grounds of vagueness. Courts may strike down a law for vagueness if it fails to give fair warning of violations or if it is susceptible to selective enforcement.⁹⁶ SB 517 failed to define a "scurrilous attack," and because voter complaints would have instigated complaints pursuant to this pledge and because a legislatively created commission would have evaluated them, enforcement may have been inconsistent.⁹⁷

90. SB 517 (SFA3), 2004 Ga. Gen. Assem.

91. *Id.*

92. *See id.*

93. *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991).

94. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964).

95. *See* SB 517 (SFA3), 2004 Ga. Gen. Assem.

96. *See, e.g., Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

97. *See* SB 517, as passed by the Senate, 2004 Ga. Gen. Assem.

Floor amendment 5 suffered from similar problems.⁹⁸ This amendment would have made a candidate liable for slander or libel committed by his campaign committee if he willfully or knowingly directed or permitted the committee to make the statements.⁹⁹ Slander and libel are not forms of protected speech, and the bill would have removed enforcement from the courts, which have traditionally dealt with enforcement, and placed it in the hands of a state regulatory agency.¹⁰⁰

Finally, amendment 7 could have been susceptible to similar challenges.¹⁰¹ Floor amendment 7, in part, would have allowed the State Ethics Commission to “investigate upon a written complaint any false, dishonest, or misleading statements made by public officers of this state in the course of his or her official duties.”¹⁰² This provision went further than the others, proposing that the Ethics Commission investigate “any false, dishonest, or misleading statements” made by any public officer.¹⁰³ This may have limited not only political speech in general, but also political speech made within the walls of the General Assembly or within the Governor’s offices.¹⁰⁴ Again, enforcement would have rested with a state regulatory agency rather than the judiciary.¹⁰⁵ Traditionally, legislators enjoyed immunity for statements made within their legislative role.¹⁰⁶ The amendment would have abrogated that immunity with very little discussion of possible repercussions or of the policies that led to the traditional legislative protection.¹⁰⁷

98. See Senate Audio, *supra* note 50.

99. SB 517 (SFA5), 2004 Ga. Gen. Assem.

100. See *id.*; *Sullivan*, 376 U.S. at 285.

101. See Senate Audio, *supra* note 50.

102. SB 517 (SFA7), 2004 Ga. Gen. Assem.

103. See *id.* (emphasis added).

104. See Senate Audio, *supra* note 50.

105. SB 517 (SFA7), 2004 Ga. Gen. Assem.

106. See, e.g., *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951); *Saleem v. Snow*, 460 S.E.2d 104, 107 (Ga. Ct. App. 1995).

107. See Senate Audio, *supra* note 50.

Campaign Finance Reform

Campaign finance is an important part of any ethics reform because campaign contributions “may create conflicts of interest that prevent politicians from exercising their best/most honest judgment with regards to their duties.”¹⁰⁸ There are four main categories of laws relating to campaign finance: “[D]isclosure, solicitation and contribution limits, provisions for public financing of campaigns, and penalties for violation of disclosure or limitations provisions.”¹⁰⁹ Disclosure “is most often used to identify conflicts of interest.”¹¹⁰ Public financing gives candidates for state-level positions the opportunity to rely predominantly “on public funds for their campaign efforts instead of private contributions.”¹¹¹ Contribution and solicitation limits prohibit or limit the amounts that individuals, organizations, or corporations can give political candidates; the purpose is to prevent undue influence over the decision-making process.¹¹² Lastly, penalties provide monetary fines for late filing of required disclosure reports and civil and criminal penalties for violating campaign finance, disclosure, and contribution laws.¹¹³ By creating laws that satisfy these four different areas, governments can help reassure the public that public officials are making decisions based on what is best for the public rather than what is best for the public officials personally or for those who financed their campaigns.¹¹⁴

While it seems clear that there is a need for ethics reform, many questions remain regarding whether the current campaign finance laws actually accomplish what they are trying to achieve.¹¹⁵ The argument is:

[M]ost forms of campaign finance reform constitute a frontal assault on the free expression protected by the First Amendment

108. BGA INTEGRITY INDEX, *supra* note 3, at 17.

109. *Id.*

110. *Id.* at 18.

111. *Id.*

112. *Id.*

113. *Id.* at 21.

114. See BGA INTEGRITY INDEX, *supra* note 3, at 2.

115. Redish, *supra* note 14.

. . . . [T]he inescapable effect of the restriction of a candidate's ability to spend or a private individual's ability to contribute is to restrict severely the candidate's ability to reach the electorate. In short, if money talks, restricting the use of money for expressive purposes silences.¹¹⁶

However, some believe that "banning or limiting private campaign contributions and requiring disclosure where they are allowed will prevent certain abuses of authority, particularly with regards to undue influence by lobbyists."¹¹⁷ Thus, the question remains: would a bill similar to SB 517 be the most appropriate way to achieve ethics reform and, more specifically, campaign finance reform?

In 2000, Governor Barnes signed a bill that increased the maximum campaign contribution from an individual during one election cycle from \$3000 to \$6000.¹¹⁸ At the time, Republicans opposed the increase, claiming that it served as "an incumbent protection act."¹¹⁹ Perhaps they were right given that the \$6000 limit exceeds the federal limit by \$4000.¹²⁰ However, after they have taken the governor's office and a majority in the Senate, Republicans no longer oppose the revenue increase.¹²¹ This inconsistency seems to support the theory held by some that the purpose of this bill was not ethics but was an attempt to disadvantage Democrats.¹²²

Some argue that since Georgia needs ethics reform, the General Assembly should have worked harder to pass this bill. However, as Senator Preston Smith noted, although "[l]awmakers talk about ethics and how important they are," it is still difficult to pass ethics legislation.¹²³ Efforts to kill this bill might not have failed had the Senate engrossed the bill when it came out of the Senate Ethics

116. *Id.*

117. BGA INTEGRITY INDEX, *supra* note 3, at 17.

118. See Kathey Pruitt & Peter Mantius, *Legislators OK Doubling Limit on Fund-Raising*, ATLANTA J. CONST., Mar. 16, 2000, at 4F, available at 2000 WL 5446530.

119. *Id.*

120. 2 U.S.C. § 441a (2004).

121. Telephone Interview with Jim Galloway, Reporter, The Atlanta Journal-Constitution (Apr. 12, 2004).

122. *Id.*

123. Preston W. Smith, *Ethics: Tougher Regulations Can't Wait*, ATLANTA J. CONST., Mar. 24, 2004, at A15, available at 2004 WL 73418229.

Committee.¹²⁴ Had the Senate engrossed the bill, it would not have been susceptible to changes on the floor, thereby preventing opponents of the bill from loading it with poison pills.¹²⁵ During the discussion of SB 517, the often-bifurcated Senate worked together as “senators from both parties loaded the bill down with amendments in an apparent effort to kill it.”¹²⁶ While the House Judiciary Committee removed a number of the amendments, the amendments still served their purpose since there simply was not enough time for the House to pass the bill and send it to a conference committee before the close of the session.¹²⁷ Had the Senate engrossed the bill, this may not have happened. Senator Smith explained that the Senate almost never engrosses bills and that legislators did not engross this particular bill because they wanted the bill to go through the entire process.¹²⁸

Bill Bozarth, the Executive Director of Common Cause of Georgia, stated that “[n]ot passing an ethics bill postpones the day where Georgia can look at its government and say that we’ve done our best to move out of the good old days.”¹²⁹ Despite the need for ethics reform in Georgia, the General Assembly failed to even pass “a weaker bill, a first-step bill or a bill with only some of the issues addressed.”¹³⁰ “A poll conducted by The Atlanta Journal-Constitution last year found that 9 of 10 Georgians ranked ethics reform as a priority for the governor and General Assembly.”¹³¹

SB 517 was a step towards stronger ethics laws, especially with respect to enforcement. One of the major changes proposed by this bill related to the filing of disclosure requirements. Currently, the Secretary of State receives filings of complaints, campaign

124. See Tom Baxter & Jim Galloway, *Political Insider: Ethics Bill Killed By Too Much Kindness*, ATLANTA J. CONST., Mar. 18, 2004, at D4, available at 2004 WL 73417699 (noting that the amendments amounted to poison pills).

125. Interview with Preston W. Smith, Senate District No. 52, in Atlanta, Ga. (May 14, 2004) [hereinafter Smith Interview].

126. Ben Smith, *Odds of Survival Slim for Ethics Bill: Speaker Casts Doubt on Whether Reform to Reach House Floor*, ATLANTA J. CONST., Apr. 7, 2004, at 5B, available at 2004 WL 73420269.

127. See State of Georgia Final Composite Status Sheet, SB 517, Apr. 1, 2004 (May 19, 2004) (noting that the House Judiciary Committee favorably reported on the bill on April 1, 2004—six days before the end of the legislative session).

128. See Smith Interview, *supra* note 125.

129. Bozarth Interview, *supra* note 79.

130. Bill Bozarth, *Ethics Reform: Inertia Could Work Against Democrats*, ATLANTA J. CONST., Apr. 29, 2004, at A15, available at 2004 WL 77160030.

131. *Don't Close Legislative Shop*, *supra* note 11.

contributions, and other disclosures.¹³² However, the State Ethics Commission is responsible for investigating complaints and violations of disclosures.¹³³ Sharing of responsibilities by the Secretary of State and the State Ethics Commission is an inefficient means of policing campaign activity.¹³⁴ Had this bill passed, it would have streamlined the process of disclosure and enforcement by consolidating this process into the State Ethics Commission.¹³⁵ Of course, even if the bill had passed, the State Ethics Commission may have been unable to perform its new duties because it has always been underfunded.¹³⁶

Ethics reform will undoubtedly return to the Georgia General Assembly in the future. Perhaps guidelines from the Better Government Association's *BGA Integrity Index* describing "best practices" will provide a guideline for a model law of the best practices from among the 50 states.¹³⁷ Their proposed laws are as follows: disclosure of all campaign contributions; including in-kind contributions, provision of public funds for candidates seeking elected office if they satisfy certain criteria; limiting contributions by individuals for state candidates and political parties to \$500; prohibition of contributions by non-natural persons to state candidates and political parties; limiting contributions by state political parties to candidates to \$1000; prohibition of contributions from regulated industries; prohibition of "accepting contributions during legislative sessions"; prohibition of anonymous contributions; prohibition of contributions in another's name; prohibition of gifts, trips, or honoraria in excess of \$300; disclosure of all gifts, trips, or honoraria of more than \$10; prohibition of accepting gifts, trips, or honoraria from lobbyists; disclosure of all gifts, trips, or honoraria valued at more than \$10; late filing fee fines of \$200 per day; misdemeanor convictions if filing is more than 30 days overdue; civil penalties not to exceed \$25,000 for violation of campaign finance and ethics laws; criminal penalties for disclosure violations which would include fines "not to exceed \$10,000 or a felony or both"; and

132. See 1988 Ga. Laws 603, § 1, at 604 (codified at O.C.G.A. § 21-5-30 (2004)).

133. See Smith Interview, *supra* note 125.

134. See *id.*

135. See *id.*

136. See *Georgia Ethics Legislation*, *supra* note 1.

137. BGA INTEGRITY INDEX, *supra* note 3, at 22-23, 26.

criminal penalties for contribution violations which would include fines “not to exceed \$10,000 or a felony or both.”¹³⁸ While current Georgia law utilizes a few of these “best practices” ethics laws, there is still substantial room for improvement.

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138. *Id.*