

3-1-2022

SB 221: The Creation of Election Leadership Committees

Nolan Hendricks
Nhendricks3@student.gsu.edu

PJ Spina
pspina1@student.gsu.edu

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>



Part of the [Election Law Commons](#)

Recommended Citation

Nolan Hendricks & PJ Spina, *SB 221: The Creation of Election Leadership Committees*, 38 GA. ST. U. L. REV. 155 (2022).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol38/iss1/17>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact gfowke@gsu.edu.

ELECTIONS

Ethics in Government: Amend Chapter 5 of Title 21 of the Official Code of Georgia Annotated, Relating to Ethics in Government, so as to Provide for a Definition; Provide for Leadership Committees; Provide for Chairpersons; Provide that Such Committees May Receive Contributions and Make Expenditures; Provide for Disposition of Assets in Certain Circumstances; Provide for Filings and Reports; Provide an Exception from Contribution Limits; Provide for Certain Notices; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 21-5-34.2
BILL NUMBER:	SB 221
ACT NUMBER:	219
GEORGIA LAWS:	2021 Ga. Laws 219
SUMMARY:	The Act primarily provides for the creation of leadership committees that accept contributions and make expenditures for the purpose of affecting the outcome of elections or advocating for the election or defeat of candidates. The governor, lieutenant governor, or a political party's nominee for those positions, and the Democratic and Republican leaders in the state Senate and House would control and chair such committees: specifically, one person designated by the majority caucus of the House of Representatives, one by the minority caucus of the House of Representatives, one by the majority caucus of the Senate, and one by the minority caucus of the Senate. Notably, these leadership committees will be able to raise funds and receive donations during legislative sessions—an ability

previously reserved to the Assembly's political parties.

EFFECTIVE DATE: July 1, 2021

“‘Transparency’ is the word of the decade. . . . Everything is transparent, and if it isn’t, it should be.”

Senator Jeff Mullis (R-53rd), Georgia Senate Floor Session, February 26, 2021

History

Political Action Committees (PACs) and independent groups exist and operate within the Georgia political arena and can receive unlimited funds from interested donors.¹ Laws, however, limit the amount of funds that PACs can contribute to an individual candidate.² Additionally, PACs cannot (and were never meant to) contribute to individual members of the Georgia General Assembly during the legislative session.³

In contrast to PACs, leadership committees established under Senate Bill (SB) 221, nicknamed the “Political Expenditure Transparency Act” by Senator Jeff Mullis (R-53rd), have no fundraising and contribution restrictions.⁴ SB 221 does, however, mandate these fundraising committees to comply with several reporting and disclosure requirements, which aim to free the Georgia democratic process from the “outside influence of . . . dark money.”⁵

1. *See Campaign Finance Requirements in Georgia*, BALLOTPEDIA, https://ballotpedia.org/Campaign_finance_requirements_in_Georgia [https://perma.cc/R2WU-TFN7]; Jonathan Raymond, *What Does Georgia’s New Campaign Finance Law Do?*, 11 ALIVE, <https://www.11alive.com/article/news/politics/what-does-georgias-new-campaign-finance-law-do/85-ca1c49fb-f940-415a-a939-60e1f1d6ef54> [https://perma.cc/BN7X-87QR] (May 29, 2021, 11:29 AM); *see also* 52 U.S.C. § 30101(4)-(6); *Understanding Nonconnected PACs*, FEC, <https://www.fec.gov/help-candidates-and-committees/registering-pac/understanding-nonconnected-pacs/> [https://perma.cc/5VU9-HK72].

2. O.C.G.A. § 21-5-41 (2021).

3. *Id.* § 21-5-35.

4. *See id.* § 21-5-34.2(e) (“The contribution limits in Code [s]ection 21-5-41 shall not apply to contributions to a leadership committee or expenditures made by a leadership committee in support of a candidate or a group of named candidates.”).

5. *Id.* § 21-5-34.2(d); Video Recording of Senate Proceedings at 3 hr., 42 min., 11 sec. (Feb. 26,

Just as with PACs and candidate committees, SB 221 requires the leadership committees to register with the Georgia Government Transparency and Campaign Finance Commission and report their financial activity on periodic public disclosure reports.⁶

The contention and debate around the Act come from the exception given to the leadership committees, which is the ability of caucus leadership to manage funds directly rather than using the larger political party as an intermediary. From its opponents, the bill received the alternative nickname, “the Gold Dome swamp bill,” which refers to the ethical concerns related to allowing unlimited funds to be given during session.⁷ On the other hand, proponents emphasize that the bill guarantees the mandatory disclosure of all money from PACs and influential outside money.⁸ But Senator Jennifer Jordan (D-6th) expressed concern that SB 221’s provisions on financial disclosures would create anything but “transparency,” explaining:

All the leadership committee has to disclose is that they got \$100 million from [a PAC fund]. They don’t have to talk about how it came from China, came from Kelly Loeffler, came from big tobacco, came from payday lenders. None of that. So, the whole idea that this stops “dark money,” and this is transparent . . . is not true. And in fact, what it’s going to do is it’s going to make dark money more prevalent.⁹

2021) [hereinafter Senate Proceedings Video] (remarks by Sen. Jeff Mullis (R-53rd)), <https://livestream.com/accounts/26021522/events/7940809/videos/218060808>.

6. See § 21-5-34.2(e) (requiring leadership committees that receive contributions or contributes more than \$500 to register with the commission and requiring disclosure reports).

7. Susanna Capelouto, *Georgia Lawmakers Find Way for Unlimited Fundraising While in Session*, WABE (Mar. 18, 2021), <https://www.wabe.org/georgia-lawmakers-find-way-for-unlimited-fundraising-while-in-session/> [<https://perma.cc/WV3D-3XHR>]; see also Video Interview with Rep. Matthew Wilson (D-80th) (May 21, 2021) (on file with the Georgia State University Law Review).

8. Senate Proceedings Video, *supra* note 5, at 3 hr., 43 min., 05 sec. (remarks by Sen. Jeff Mullis (R-53rd)).

9. Senate Proceedings Video, *supra* note 5, at 3 hr., 51 min., 36 sec. (remarks by Sen. Jennifer Jordan (D-6th)).

*Bill Tracking of SB 221**Consideration and Passage by the Senate*

Senator Jeff Mullis (R-53rd) sponsored SB 221 in the Senate with Senator Butch Miller (R-49th), Senator Mike Dugan (R-30th), Senator Steve Gooch (R-51st), Senator John Kennedy (R-18th), Senator Larry Walker, III (R-20th), Senator Dean Burke (R-11th), and Senator Bill Cowsert (R-46th) cosponsoring.¹⁰ The bill was prefiled on February 22, 2021, and the Senate first read the bill on February 23, 2021.¹¹ The Senate referred the bill to the Senate Rules Committee that same day.¹² The following day, the Senate Rules Committee favorably reported the bill as originally written.¹³

The Senate read the bill for a second time on February 25, 2021, and a third time on February 26, 2021.¹⁴ Senator Brandon Beach (R-21st) introduced a floor amendment to the bill; it aimed to add the following language to line 20 as introduced on the Senate floor: “[L]eadership committees can only spend funds on general election races or on incumbents in a primary election.”¹⁵ The amendment failed, but the Senate adopted the bill by a vote of 30 to 21.¹⁶

Consideration and Passage by the House

Representative Trey Kelley (R-16th) sponsored SB 221 in the House.¹⁷ The House first read the bill on March 1, 2021, and a second time on March 3, 2021.¹⁸ The House referred the bill to the House Judiciary Committee, which favorably reported on the bill on March

10. Georgia General Assembly, SB 221, Bill Tracking [hereinafter SB 221, Bill Tracking], <https://www.legis.ga.gov/legislation/59920>.

11. State of Georgia Final Composite Status Sheet, SB 221, May 13, 2021; SB 221, Bill Tracking, *supra* note 10.

12. SB 221, Bill Tracking, *supra* note 10.

13. State of Georgia Final Composite Status Sheet, SB 221, May 13, 2021.

14. *Id.*

15. Failed Senate Floor Amendment to SB 221, introduced by Sen. Brandon Beach (R-21st), Feb. 26, 2021.

16. Georgia Senate Voting Record, SB 221, #89, #90 (Feb. 26, 2021).

17. SB 221, Bill Tracking, *supra* note 10.

18. State of Georgia Final Composite Status Sheet, SB 221, May 13, 2021.

16, 2021.¹⁹ On March 18, 2021, the House read SB 221 for the third time.²⁰ The House then voted to pass the bill as introduced by a vote of 96 to 69.²¹

The bill was sent to Governor Brian Kemp (R) on April 7, 2021.²² The Governor signed the bill into law on May 4, 2021, and the Act became effective on July 1, 2021.²³

The Act

The Act amends Title 21 of the Official Code of Georgia Annotated, which regulates state elections, by adding Code section 21-5-34.2.²⁴ This section establishes and provides for the function of leadership committees not restrained by maximum contribution limits but subject those committees to mandatory financial reporting requirements for all donations they receive.²⁵

Subsection (a) outlines two different types of the leadership committees governed under this section.²⁶ First, the Governor, the Lieutenant Governor, or a political party's nominee for either Governor or Lieutenant Governor during the year that they are nominated would chair a leadership committee.²⁷ Second, the majority and minority caucuses of both the Georgia House of Representatives and the Georgia Senate may designate up to two PACs as leadership committees.²⁸ The subsection, however, explicitly states that no one may serve as chairperson on more than one leadership committee.²⁹

Subsection (b) provides for the leadership committees' fundraising function.³⁰ The Act permits leadership committees to receive donations and contributions from any persons that support the cause or

19. *Id.*

20. *Id.*

21. Georgia House of Representatives Voting Record, SB 221, #270 (Mar. 18, 2021).

22. State of Georgia Final Composite Status Sheet, SB 221, May 13, 2021.

23. *Id.*

24. 2021 Ga. Laws 219, § 1, at 467–68 (codified at O.C.G.A. § 21-5-34.2 (2021)).

25. O.C.G.A. § 21-5-34.2 (2021).

26. *Id.* § 21-5-34.2(a).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* § 21-5-34.2(b).

purpose of the specific leadership committee.³¹ This subsection, as well as the remainder of the bill, provides zero restrictions as to the source of donations to leadership committees.³²

Subsection (c) outlines the procedure for when committee chairpersons no longer hold elected office.³³ When a chairperson leaves office, that person's leadership committee must (1) "transfer [all the committee's] assets . . . to another leadership committee" within a sixty-day period, (2) name another person who complies with the requirements of subsection (a) as chairperson of the leadership committee within sixty days, or (3) dispose entirely of the leadership committee's assets in compliance with Code section 21-5-33.³⁴

Subsection (d) provides for the purpose and utility of the funds raised by leadership committees.³⁵ All funds obtained by leadership committees can "affect[] the outcome of any election," whether in support of a party candidate or advocating for the defeat of another.³⁶ Funds may also counterbalance or defray all expenses incurred by campaigns for a candidate's reelection or the retention of their office.³⁷

Subsection (e) attempts to achieve Senator Jeff Mullis's (R-53rd) goal of financial transparency by aiding the effort to expose "dark money" within Georgia state politics. Notably, a leadership committee must register and report *all* contributions exceeding \$500 to the Georgia Transparency and Campaign Finance Commission within ten days of receiving the contribution.³⁸ Also, all communications funded and paid for by the leadership committee to achieve the purposes outlined under subsection (d) must contain either an audible or written disclaimer unless otherwise impractical.³⁹ This subsection, however, excludes leadership committees from all contribution limitations as outlined under the relevant Code section.⁴⁰

31. § 21-5-34.2(b).

32. *Id.*

33. *Id.* § 21-5-34.2(c).

34. *Id.*

35. *Id.* § 21-5-34.2(d).

36. *Id.*

37. § 21-5-34.2(d).

38. *Id.* §§ 21-5-3(5), -34.2(e).

39. *Id.* § 21-5-34.2(e).

40. *Id.*

Lastly, subsection (f) clarifies that leadership committees are completely “separate legal entities from [a] candidate’s campaign committee” and should not be considered or categorized as an independent committee.⁴¹

Analysis

Although Senator Jeff Mullis (R-53rd) contends that this “non-partisan bill equally benefits the electoral fundraising efforts of both the Democrats and the Republicans,” SB 221’s opponents assert otherwise.⁴² Specifically, opponents warn that the bill will “tip the scale” in favor of those already holding power within Georgia politics.⁴³ Senator Jennifer Jordan (D-6th) argues that the bill’s disclosure requirement will amplify, rather than combat, the influence of “dark money” in Georgia politics.⁴⁴ According to Senator Jordan, by eliminating contribution limitations and permitting unlimited donations to leadership committees during the General Assembly session, the bill will “benefit[] [those] who have decided to take themselves out of having to follow the rules.”⁴⁵ Although Georgia may have to wait until the next election cycle to observe the full financial and ethical results of SB 221, some immediate impacts can be anticipated.

Transparency

During the House floor debate on this bill, House Majority Whip Representative Trey Kelley (R-16th) said that “[SB 221] is full of transparency and sunshine.”⁴⁶ Representative Kelley noted two

41. *Id.* § 21-5-34.2(f).

42. Senate Proceedings Video, *supra* note 5, at 3 hr., 43 min., 55 sec. (remarks by Sen. Jeff Mullis (R-53rd)); *Id.* at 3 hr., 51 min., 36 sec. (remarks by Sen. Jennifer Jordan (D-6th)).

43. James Salzer, *Kemp the First to Set up Newly Legal Unlimited Donation Committee*, ATLANTA J.-CONST. (Aug. 1, 2021), <https://www.ajc.com/politics/kemp-the-first-to-set-up-newly-legal-unlimited-donation-committee/X36LZUQJFFE3NBE4PPY2GQYXDU/> [<https://perma.cc/CB6L-872N>].

44. Senate Proceedings Video, *supra* note 5, at 3 hr., 51 min., 36 sec. (remarks by Sen. Jennifer Jordan (D-6th)).

45. Salzer, *supra* note 43.

46. Video Recording of House Proceedings at 1 hr., 3 min., 30 sec. (Mar. 18, 2021) [hereinafter House Proceedings Video] (remarks by Rep. Trey Kelley (R-16th)),

required functions of leadership committees that shine light on their transparency: (1) once a leadership committee raises \$500, then the same fundraising disclosure rules of individual candidates will govern the leadership committee and (2) when the leadership committee expends funds, the expenditure comes with a disclaimer that the named leadership committee spent the funds.⁴⁷

SB 221 may slightly increase transparency if an individual or entity that was otherwise giving directly to a party's trust fund, as an intermediary, and the trust then passes their donations to a leadership committee.⁴⁸ Yet, the existence of leadership committees and their new ability to coordinate directly with candidates do not automatically dissolve the shadow of "dark money" over Georgia politics that concerns watchdog groups like OpenSecrets.org.⁴⁹

Although SB 221 does not "decrease" the amount of transparency in the election cycle, nothing stops like-minded donors from giving money first to a non-profit or existing PAC and then having that PAC give the money to a leadership committee, which effectively conceals the identity of the original donors. For example, an individual wishing to support a politician while also remaining anonymous could first donate to the politician's affiliated PAC, which could, in turn, give money to the corresponding leadership committee coordinating with the politician's campaign, and the disclosure would only show the donation from the affiliated PAC.⁵⁰ Although any amount of "sunshine" is good for Georgia, SB 221 fails to fully open the curtains on the original sources of funds for many campaigns.

<https://www.youtube.com/watch?v=o0OECqHulew>.

47. *Id.* Here, Representative Kelley is referring to the requirements in Code section 21-5-34(a)(2)(A), (b), and (c). See O.C.G.A. § 21-5-34(a)(2)(A)–(c) (2020).

48. For example, an individual contributing \$501 directly to the Republican Party Trust would not need to be disclosed when the trust, in turn, passes the money to a candidate; however, the leadership committee would need to disclose donors in respect to Code section 21-5-34. See § 21-5-34.

49. Isaiah Poritz, *A Little Known Georgia Campaign Finance Law Will Allow Select Candidates to Collect Unlimited Campaign Cash*, OPENSECRETS.ORG (Aug. 19, 2021, 11:44 AM), <https://www.opensecrets.org/news/2021/08/georgia-campaign-finance-law-allow-candidates-collect-unlimited-cash/> [https://perma.cc/Z2P7-G47Y].

50. See O.C.G.A. § 21-5-34.2 (2021).

Advantages to Incumbents

With incumbents already possessing a general electoral advantage over their challengers, critics of SB 221 believe the bill builds a bridge that goes too far, calling it the “Incumbent Protection Act.”⁵¹ Although SB 221 does not entirely tip the scales in favor of incumbents, it does give incumbents a head start on campaigning via its leadership committees.

First, SB 221’s passage may have an impact on primary challengers. Now that incumbent candidates may raise funds during the session, primary challengers lose the advantage of getting a head start on their incumbent opponents. Although a leadership committee could withhold funds from the incumbent (or even fund the opposition challenger), that mechanism already existed through PACs before SB 221.⁵²

In addition to removing an existing advantage for primary challengers, SB 221 gives earlier access to incumbents facing challengers from across the aisle, particularly in the race for the governor’s mansion. For example, Governor Brian Kemp (R) is the first to make use of the leadership committees.⁵³ Because SB 221 allows for leadership committees for the “Governor” and “the nominee of a political party for Governor selected in a primary election in the year in which he or she is nominated,” incumbent Governors can start raising funds through a leadership committee even if they have a primary challenger, whereas opposition candidates must wait until the conclusion of the primary election before they can raise funds through the same mechanism.⁵⁴

51. Rickey Bevington, *It’s Essentially an Incumbent Protection Act’: New Law to Allow Unlimited Fundraising—for a Few*, GA. PUB. BROAD., <https://www.gpb.org/news/2021/05/13/its-essentially-incumbent-protection-act-new-law-allow-unlimited-fundraising-for> [https://perma.cc/4BT3-CFEH] (May 17, 2021, 11:43 AM).

52. *See Campaign Reports—Other than Candidate Committees*, GA. GOV’T TRANSPARENCY & CAMPAIGN FIN. COMM’N, https://media.ethics.ga.gov/Search/Campaign/Campaign_NameSearchresults_NC.aspx?CommitteeType=1&CommitteeName= [https://perma.cc/23RA-TEN7].

53. Salzer, *supra* note 43.

54. *See id.*; § 21-5-34.2(a).

Another possible issue is the limitation of these leadership committees to political parties and a minority caucus.⁵⁵ Many political groups, such as the Libertarian Party of Georgia, are not formally registered as political parties and do not hold primaries in the same way as the Republican and Democratic parties of Georgia.⁵⁶ If groups such as the Libertarian Party of Georgia, the Green Party of Georgia, or any groups of like-minded independent candidates take seats in the Assembly, then those groups would be constrained by the existing ethics rules and would have to rely on the goodwill of the leadership committees for fundraising during session.

Total Amount of Money Raised for Campaigns

Limits restrain how much statewide candidates may receive from individual donors.⁵⁷ Additionally, the Campaign Finance Commission sets these limits that vary between statewide and other offices.⁵⁸ For example, gubernatorial candidates can receive a total of \$14,000 from individual donors, assuming no run-offs.⁵⁹ With the price tag of the 2018 election being upwards of \$100 million, it makes sense that candidates would want access to an entity that can receive unlimited funds from those donors and then distribute them on the donors' behalf.⁶⁰

Both a donor's ability to give unlimited funds to the leadership committees and the leadership committees' ability to use those funds during session alarm opponents of the bill. Representative Matthew Wilson (D-80th) stated that "the only purpose that this bill serves is to funnel more money into our politics."⁶¹ Although observers must wait

55. See § 21-5-34.2.

56. Telephone Interview with Ryan Graham, Chair, Libertarian Party of Ga. (July 15, 2021) (on file with the Georgia State University Law Review).

57. O.C.G.A. § 21-5-41(a)-(b) (2021).

58. See *Contribution Limits*, GA. GOV'T TRANSPARENCY & CAMPAIGN FIN. COMM., <https://ethics.ga.gov/contribution-limits/> [<https://perma.cc/W9NC-YSBT>].

59. *Id.*

60. James Salzer & Greg Bluestein, *Final Price Tag on Georgia Governor's Race Exceeds \$100 Million*, ATLANTA J.-CONST. (Jan. 9, 2019), <https://www.ajc.com/news/state—regional-govt—politics/final-price-tag-georgia-governor-race-exceeds-100-million/R0brqTrDaxwkAXq4mLMHuK/> [<https://perma.cc/533D-QSZ5>].

61. House Proceedings Video, *supra* note 46, at 1 hr., 15 min., 1 sec. (remarks by Rep. Matthew Wilson (D-80th)).

until next election cycle to see if an increase in total campaign donations results from SB 221's passage, PACs supporting the 2022 reelection of Governor Kemp have already begun migrating existing funds to his leadership committee.⁶²

As for the effect on Assembly members, Representative Stacey Evans (D-57th) expressed concern over handing the expense control to the caucus leadership, noting that it may curtail any hope of an “independent streak” for a General Assembly member who disagrees with their party.⁶³ If the PACs that support General Assembly members follow the direction of those supporting Governor Kemp, rather than looking to PACs for the mainstay of their funds, some (particularly junior) General Assembly members may instead look to their respective leadership committee to back their candidacy.⁶⁴ Representative Kelley responded to these concerns by noting that establishing a leadership committee is entirely optional and that “no one is being forced to do this.”⁶⁵ As of September 2021, neither the Senate nor the House caucus has set up a leadership committee—the only existing one is for Governor Kemp.⁶⁶

Conclusion

Time will demonstrate the bill's true functionality—whether that be to resolve concerns relating to the influence of “dark money” in Georgia politics or to financially influence legislators to vote in accordance with the needs of special interest groups during the session. Since these leadership committees must comply with the reporting requirements, the donors that make use of this new mechanism must be amicable to “transparency and sunshine.”⁶⁷ Whether transparency

62. Salzer, *supra* note 43 (“Kemp-backers have already had a political nonprofit called Keeping Georgia Strong that can take unlimited funds from donors, including—at least \$45,000 from health care giant HCA, \$15,000 from the nursing home lobby and \$10,000 from the filmmakers PAC. But the nonprofit's CEO, Capitol lobbyist Clay Huckaby, said it is being phased out now that the leadership committee has been created.”).

63. House Proceedings Video, *supra* note 46, at 1 hr., 10 min., 4 sec. (remarks by Rep. Stacey Evans (D-57th)).

64. *See id.*

65. *Id.* at 1 hr., 20 min., 9 sec. (remarks by Rep. Trey Kelley (R-16th)).

66. Salzer, *supra* note 43.

67. *See* O.C.G.A. § 21-5-34(a)(1)(B), (b)(1)(A)-(G) (2020); House Proceedings Video, *supra* note 46, at 1 hr., 3 min., 30 sec.

deters donors or whether the lack of contribution caps will entice donors are two points that deserve close observation come next election cycle.

Nolan Hendricks & Paul Joseph Spina