

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Case No. 3:15cr64 (VLB)
	:	
v.	:	
	:	
	:	
GEORGE GALLO	:	July 31, 2015

**GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING**

The Court has scheduled sentencing in this matter for August 20, 2015. As set forth below, the Government respectfully submits that a term of incarceration of 15 months represents a balanced consideration of the section 3553(a) factors, and is warranted in this case.

**I. INTRODUCTION**

In 2005, the State of Connecticut enacted sweeping campaign finance reforms. At the center of that legislation was the creation of the Citizens Election Program (“CEP”). The CEP was built on the basic premise that by pooling public resources in a campaign finance system, the people of Connecticut could (1) expand access to the ballot by making campaigns more affordable and (2) limit the corrupting influence of money by capping contribution limits and prohibiting certain kinds of contributions. In part, these landmark reforms sought to eliminate the influence peddling and pay-to-play schemes that led to former Governor John Rowland’s resignation and federal conviction.

This case is about Mr. Gallo’s prolonged and fraudulent effort to subvert the noble purposes of the CEP for his own personal profit. More to the point, Mr.

Gallo used his position as Chief of Staff to the Minority Leader of the Connecticut House of Representatives to steer taxpayer funded Republican candidates to a Florida direct mail vendor in exchange for payments totaling 10% of the candidates' direct mail expenditures. In all, Mr. Gallo steered approximately \$1,000,000 in publicly financed campaign money to Company No. 1, pocketing a hidden profit of over \$100,000 for himself. Mr. Gallo lied to candidates and others about his financial arrangement, and, as a result, publicly funded candidates paid 10% more than the Florida mail vendor would have otherwise charged.

**II. FACTUAL BACKGROUND**

The facts underlying Mr. Gallo's criminal conduct are accurately summarized at ¶¶ 7-28 of the Pre-Sentence Report, dated June 29, 2015 (the "PSR"). The Government reserves the right to present additional evidence at sentencing.

**III. THE PRE-SENTENCE REPORT & THE SENTENCING GUIDELINES**

**A. The PSR**

The PSR calculates that Mr. Gallo faces an advisory sentencing range of 27 to 33 months imprisonment as follows: Under U.S.S.G. § 2B1.1(a)(1), the base offense level is 7. See PSR ¶ 34. Under § 2B1.1(b)(1)(E), the PSR adds eight levels because the actual loss involved in Mr. Gallo's offense exceeded \$70,000 but was less than \$120,001. See PSR ¶ 35. The PSR then adds four levels under § 2B1.1(b)(2)(B) because the Probation Office determined that the offense

involved more than 50 victims.<sup>1</sup> See PSR ¶ 36. The PSR then adds two levels because the defendant abused a position of trust. See PSR ¶ 38. After subtracting three levels for acceptance of responsibility, the PSR arrives at a total offense level of 18. See PSR ¶ 44. Mr. Gallo is in Criminal History Category I. PSR ¶ 46.

## B. The Defendant's Objections

### 1. Loss Calculation

The defendant objects to the PSR's conclusion that Mr. Gallo's offense caused an actual, total loss of \$117,617.63. The defendant frames this objection as a general attack on section 2B1.1, asserting that the eight-level enhancement overstates the seriousness of Mr. Gallo's conduct because "the federal sentencing guidelines for economic offenses are absurdly high." See Docket No. 15-2 at 4. The defendant presents no analysis as to why the measure of loss in this particular case is inappropriate. He wrongly claims that his guideline range is "based almost solely upon a monetary figure." *Id.* In fact, the PSR's adjusted offense level is comprised of 13 levels that have nothing to do with the monetary

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<sup>1</sup> The parties' guideline stipulation did not include an enhancement based on the number of victims, and the Government is not seeking such an enhancement. If the court applies this enhancement, the Government would not object to a four-level departure pursuant to *United States v. Fernandez*, 877 F.2d 1138 (2d Cir. 1989). Such a departure would result in a total offense level of 14 and a guideline range of 15 to 21 months.

loss. This is not a case where the loss table has dramatically or unfairly skewed Mr. Gallo's guidelines exposure.<sup>2</sup>

The defendant also asserts – without analysis – that there were no actual or intended losses to the victims. This view is not consistent with the evidence. It is undisputed that during the 2008 election cycle, Mr. Gallo falsely advised Public Official No. 1 and Political Operative No. 1 that he had no financial relationship with any vendor sponsored by the House Republican Campaign Committee (“HRCC”). It is undisputed that, absent his misrepresentation, Mr. Gallo would have been prohibited from receiving any kickback payments, and his 10% “fee” would not have been included in the price paid by Republican House candidates during the 2008, 2010 and 2012 election cycles.<sup>3</sup> Moreover, Mr. Gallo was aware that, during the 2008, 2010 and 2012 election cycles, victims regularly inquired as to whether anybody associated with the HRCC received a financial benefit from HRCC sponsored firms. In response, Mr. Gallo made misrepresentations and caused Political Operative No. 1 to make misrepresentations on his behalf in

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<sup>2</sup> The defendant cites a concurring opinion in *United States v. Corsey*, 723 F. 3d 366, 379 (2d Cir. 2013) for the proposition that intended loss is an arbitrary measure of a crime's seriousness. In *Corsey*, the district court sentenced four co-defendants to 20 years each, which represented the statutory maximum but fell below what would have otherwise been the guideline range. *Id.* at 371. The guideline range was based largely on an intended loss calculation of \$400,000,000, which resulted in a 30 level increase. *Id.* at 370. It seems obvious that the circumstances of the *Corsey* case are not at all similar to the circumstances of this case. Even so, it is worth noting that the majority in *Corsey* did not join the concurring opinion's invitation to reject the loss table or its conclusion that the sentences were substantively unreasonable.

<sup>3</sup> Employee No. 1 informed the Government unequivocally that he would have provided a 10% price reduction to any candidate who did not want to cover the cost of a kickback to Mr. Gallo.

order to mislead the candidates and perpetuate the fraud. In short, Mr. Gallo's misrepresentations to Public Official No. 1, Political Operative No. 1 and candidates made the entire scheme possible and caused all subsequent losses. This fact is further supported by the victims' generally held view that, if they had known Mr. Gallo was receiving a 10% kickback, they would have refused to pay it or selected a different vendor.<sup>4</sup> In light of these facts, the actual loss is the amount paid by each House Republican campaign to cover the hidden kickbacks paid to Mr. Gallo during the 2008, 2010 and 2012 campaigns.<sup>5</sup>

It is equally apparent that Mr. Gallo *intended* to cause this loss. Mr. Gallo knew that if he truthfully disclosed his financial relationship with Company No. 1, the relationship would be terminated. He deliberately and falsely denied that the relationship existed because he intended to and did deprive House Republican candidates of their money as described in ¶ 26 of the PSR.

Finally, to the extent the Court has any difficulty making a "reasonable estimate of loss," it is entirely appropriate for the Court to consider Mr. Gallo's gain as the appropriate measure of his culpability. See U.S.S.G. 2B1.1, Application Note 3(B)-(C) ("The court shall use the gain that resulted from the

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<sup>4</sup> The defendant inaccurately suggests that the candidates would have paid the same price regardless of whether Mr. Gallo received a 10% fee.

<sup>5</sup> If the defendant persists in his objection to the loss calculation, the Government intends to present the testimony of Public Official No. 1, Political Operative No. 1 and Employee No. 1.

offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.”).<sup>6</sup>

## 2. Abuse of a Position of Trust

Under the Sentencing Guidelines, a two-level “Abuse of Position of Trust” enhancement is appropriate “[i]f the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense.” U.S.S.G. § 3B1.3. “Proper application of § 3B1.3 requires satisfaction of two requirements: first, that [the defendant] occupied a ‘position of trust,’ and second, that [the defendant] abused that position of trust to commit or conceal his crimes.” *United States v. Nuzzo*, 385 F.3d 109, 115 (2d Cir. 2004).

Regarding the first prong, the Commentary to U.S.S.G. § 3B1.3 focuses on the discretion invested in the position. “‘Public or private trust’ refers to a position of public or private trust characterized by professional or managerial discretion (i.e., substantial discretionary judgment that is ordinarily given considerable deference). Persons holding such positions ordinarily are subject to significantly less supervision than employees whose responsibilities are primarily non-discretionary in nature.” U.S.S.G. § 3B1.3 cmt. n.1. Whether a defendant “occupied a position of trust within the meaning of § 3B1.3 is

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<sup>6</sup> The defendant claims that certain payments Mr. Gallo received in connection with State Senate campaigns and a campaign for State Treasurer should not be included in the gain/loss calculation. The Government is considering whether the gain/loss should be confined only to payments made in connection with campaigns for the House of Representatives.

considered from the victim's viewpoint and presents a question of law subject to *de novo* review." *United States v. Thorn*, 446 F.3d 378, 388 (2d Cir. 2006).

Regarding the second prong, "the position of public or private trust must have contributed in some significant way to facilitating the commission or concealment of the offense (e.g., by making the detection of the offense or the defendant's responsibility for the offense more difficult)." U.S.S.G. § 3B1.3 cmt. n.1. "The determination of whether a defendant utilized a position of trust or special skill in a manner that significantly facilitated the commission or concealment of the offense is a question of fact reviewed for clear error." *Thorn*, 446 F.3d at 388.

First, there is no question that Mr. Gallo occupied a position of trust. He was the Chief of Staff to the Minority Leader of the Connecticut House of Representatives. In that capacity, he was responsible for overseeing the political and campaign operations for the House Republican caucus. In particular, in 2008, Mr. Gallo re-designed HRCC's operations so as to maximize HRCC's influence over publicly financed Republican candidates. Mr. Gallo was given wide discretion to select HRCC's preferred vendors, and his decisions in this regard were given considerable deference by the Minority Leader. Further, the candidates viewed Mr. Gallo's position as Chief of Staff as one of significant authority.

Second, there is no question that Mr. Gallo's position of trust enabled him to carry out his fraud undetected. Because of his position, Mr. Gallo was

entrusted with the selection of HRCC vendors. He alone negotiated the terms of Company's No. 1's access to Republican candidates, and he did so with no oversight. As a result, unbeknownst to candidates and HRCC staff, he was able to demand a 10% fee in exchange for granting Company No. 1 access to Republican candidates and the HRCC's endorsement as a preferred vendor. Mr. Gallo instructed Employee No. 1 not to discuss their arrangement in the presence of other HRCC staff. His power to terminate Company No. 1's relationship with the HRCC insured that Employee No. 1 would keep their arrangement secret. In this manner, Mr. Gallo's position of trust facilitated both the commission and concealment of his fraud.

#### IV. GOVERNING LAW

A sentencing judge is required to "(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence." See *United States v. Fernandez*, 443 F.3d 19, 26 (2d Cir.), *cert. denied*, 127 S. Ct. 192 (2006); *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005). The § 3553(a) factors include: (1) the nature and circumstances of the offense and history and characteristics of the defendant; (2) the need for the sentence to serve various goals of the criminal justice system, including (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment, (b) to accomplish specific and general deterrence, (c) to protect the public from the defendant, and (d) to provide the



defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the sentencing range set forth in the guidelines; (5) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to victims. See 18 U.S.C. § 3553(a).

In *United States v. Rattoballi*, the Second Circuit emphasized that “*Booker* did not signal a return to wholly discretionary sentencing.” 452 F.3d 127 (2d Cir. 2006) (citing *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005)). “While district courts enjoy discretion following *Booker*, that discretion must be informed by the § 3553(a) factors; a district court cannot import its own philosophy of sentencing if it is inconsistent with the § 3553(a) factors.” *Id.* (internal quotations omitted). Calculating the applicable Guideline range is the “starting point and the initial benchmark,” but the district court must then consider all the sentencing factors in Section 3553(a) and make an “individualized assessment based on the facts presented.” *Gall v. United States*, 128 S.Ct. 586, 596-97 (2007). If the district court imposes an outside the Guidelines range sentence, “it must consider the extent of the deviation and ensure that justification is sufficiently compelling to support the degree of the variance.” *Id.* at 597. The district court must then “adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Id.*

**V. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)**

**A. Nature and Circumstances of the Offense & the Need for the Sentence to Reflect the Seriousness of the Offense**

The manner in which Mr. Gallo committed his fraud was all too mundane. He fraudulently induced people to pay an inflated price for a service by lying to them about the fact that he was pocketing 10% of the cost in the form of a kickback from the vendor. The circumstances and context for his offense are what make his conduct so troubling. The 2008 election cycle was a watershed moment in Connecticut politics. Citizens had made a policy choice to increase their electoral choices and limit the corrupting influence of money by establishing publicly financing state campaigns. That is, instead of acquiescing in a private finance system which, according to the legislature, limited voter choice and fueled pay-to-play schemes, Connecticut citizens put up their own money to support a system of their choice.

While some saw the CEP as a way to clean up elections, Mr. Gallo saw the CEP as a personal money maker. As the newly hired Chief of Staff to the Minority Leader, Mr. Gallo recognized that the CEP would lead to more, well-financed Republican House candidates many of whom were political novices. He reimagined the HRCC as a one-stop-shop where Republican House candidates could obtain a variety of campaign services: direct mail, voter lists, polling, staff, etc. As the architect of this program, Mr. Gallo had broad discretion to select the HRCC's preferred vendors. One of those vendors was Company No. 1. When

Mr. Gallo contacted Employee No. 1, he made clear that Company No. 1's participation in this new, unprecedented opportunity was contingent on Mr. Gallo receiving a 10% cut of the business. According to Employee No. 1, the authority to control that business stemmed from Mr. Gallo's position as Chief of Staff to the Minority Leader.

Even as Mr. Gallo was striking his deal with Employee No. 1, he was denying that any such arrangement existed to people who were in position to stop it: Public Official No. 1 (who was also a candidate) and Political Operative No. 1. In fact, candidates attending the HRCC's campaign schools often questioned whether anybody at the HRCC had a financial interest in the selection of HRCC vendors. Based on Mr. Gallo's misrepresentations, HRCC staff denied that any financial relationship existed. Further, Mr. Gallo attended meetings with individual candidates where similar misrepresentations were made. Indeed, by 2012, these questions were so common that HRCC staff and Mr. Gallo preempted the questions by falsely telling candidates up front that nobody associated with HRCC had a financial stake in the candidates' choice of vendor. Over a four-year period, Mr. Gallo repeatedly lied and caused others to present false information to candidates so that he could continue to receive hidden kickbacks from Company No. 1.

In essence, Mr. Gallo was a state employee who, because of his authority within the House Republican caucus, exercised significant influence over the

HRCC's campaign operations and Republican candidates' spending choices.<sup>7</sup> Mr. Gallo abused this authority by requiring a 10% kickback in exchange for granting Company No. 1 access to Republican candidates. Of course, Mr. Gallo's 10% fee deprived Republican campaigns of precious, taxpayer funded resources that otherwise would have been used for necessary, legitimate campaign expenses.

The true seriousness of this offense, however, is not measured solely by the financial loss to individual campaigns. One of the more troubling aspects of Mr. Gallo's offense is that he directed his unwitting subordinates to provide false information on his behalf. Political Operative No. 1 made presentations to dozens of candidates in which he repeated Mr. Gallo's false claim that nobody associated with the HRCC had a financial interest in the HRCC sponsored vendors. Mr. Gallo's conduct jeopardized the credibility and the careers of others. Finally, Mr. Gallo's offense targeted the CEP itself. He sought to profit from a system that was set up solely to serve the public's interest in clean and transparent elections. In doing so, Mr. Gallo weakened the CEP and undermined the public's confidence in the integrity of a vital component of the democratic process in Connecticut.

Mr. Gallo's conduct was undoubtedly serious and warrants a term of imprisonment of 15 months.

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<sup>7</sup> It should be noted that it was highly improper for Mr. Gallo to engage in partisan campaign activities in his capacity as a state employee. Yet, this is precisely what he did.

**B. History and Characteristics of the Defendant**

Much of Mr. Gallo's personal history is both impressive and compelling. He is a committed and faithful spouse, who has dedicated himself to caring for his sick wife. He was brought up in humble circumstances by two dedicated and hard working parents. He made the most of the opportunities he had, worked hard and obtained a quality education. Part of what makes Mr. Gallo's professional success impressive is that he did not have the family and social connections that often give people a leg up in politics. Instead, Mr. Gallo rose to the top of Republican politics in Connecticut based on his natural ability and his strong work ethic. In the Government's view, however, Mr. Gallo clearly lacked the ethical discipline required of people in positions of public authority. It is undeniable that he placed his financial interests ahead of the people he was supposed to serve.

**C. Specific Deterrence & Protection of the Public**

It is difficult to know whether Mr. Gallo requires additional deterrence or presents a further risk of harm to the public. He has no criminal history, but his fraud did span several years. It seems unlikely that Mr. Gallo will assume any significant positions of trust in the future. On balance, Mr. Gallo presents a relatively low risk of recidivism, and is unlikely to cause further harm to the public.

**D. General Deterrence & Promoting Respect for the Law**

The more important aspect of deterrence in this case, however, is general deterrence. Mr. Gallo was a high-ranking state official. His responsibilities included overseeing and influencing the partisan campaign activities of the House Republican caucus. This alone was an improper exercise of his official authority. Having assumed that role, however, Mr. Gallo used his authority to enrich himself at the expense of taxpayers, the HRCC and the candidates who relied on him. Apparently, Mr. Gallo and others like him continue to believe that the material benefits fraud and corrupt activity outweigh the risks of detection and incarceration. For those individuals, notions of personal integrity and responsible citizenship may not be sufficiently compelling to dissuade them from acting unlawfully. The Court's sentence should send a strong message that public officials and political operatives who use their position of authority to engage in self-dealing and fraud will pay a heavy price in federal court.

A 15-month term of imprisonment will also promote respect for the law by demonstrating to citizens that their democratic institutions and resources can and will be protected. Mr. Gallo's offense has fueled the corrosive impression that a handful of officials and political operators exercise undue and hidden influence over the electoral process. This is unacceptable, and the Court's sentence must show that it is unacceptable. A substantial term of imprisonment will promote respect for the law by demonstrating that influential political insiders

who fraudulently undermine the electoral system established by the people of Connecticut will face appropriate consequences.

VI. CONCLUSION

For the foregoing reasons, the Government respectfully submits that a sentence of 15 months imprisonment is appropriate and warranted in light of the sentencing factors set forth at 18 U.S.C. § 3553(a).

Respectfully submitted,

DEIRDRE M. DALY  
UNITED STATES ATTORNEY

A handwritten signature in blue ink, appearing to read "Christy M. Mattei".

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

A handwritten signature in blue ink, appearing to read "Christopher M. Mattei". The signature is fluid and cursive, with a horizontal line extending from the end.

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**CHRISTOPHER M. MATTEI**  
**ASSISTANT UNITED STATES ATTORNEY**