

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Martin Looney, *et al.*
City of Hartford

File No. 2016-074

FINDINGS AND CONCLUSIONS

Senators Martin Looney and Bob Duff, both Democratic leaders in the Connecticut State Senate, contacted the Commission in September 2016 regarding payments made by the Senate Republican Office to Align Media, a Texas internet services company, and whether those payments potentially violated Connecticut statutes. Based upon the contents of that letter, as well as news accounts of circumstances surrounding the payments made to Align Media and the services that the company provided, the Commission initiated an investigation in September 2016. After investigating the allegations in the complaint, the Commission makes the following findings of fact and conclusions of law:

1. Complainants Martin Looney and Bob Duff serve as the president and Democratic leader of the Connecticut State Senate, respectively. On September 2, 2016, the two senators delivered a letter to the Commission about what they termed “the questionable and potentially illegal relationship . . . between the Connecticut Senate Republican Office (SRO) and two Texas-based companies, Align Media . . . and VoterTrove . . .”¹ The Commission initiated an investigation into whether any statutes under its jurisdiction were violated by the agreement between the Senate Republicans and the media companies as well as the operation of that agreement.
2. The Democratic leaders in the Senate alleged that the Republicans’ arrangement with the Gargiulo companies “is extremely troubling, raises ethical questions and appears to violate state and federal law.”² They did not specify which state laws the SRO’s relationship with the Gargiulo companies violated, but identifying potential state laws that may have been violated is not a requirement for complaints filed with the Commission.
3. For the purposes of the Commission’s investigation, the most relevant of the Complainants’ allegations involves the potential sharing of data between Align Media, a company that

¹ Letter from Martin Looney and Bob Duff to Michael Brandi, State Elections Enforcement Comm’n. (September 2, 2016) (seeking investigation of relationship between SRO and two Gargiulo-owned companies).

² Letter from Looney and Duff to Brandi (Sept. 2, 2016).

contracted with the SRO to maintain its website, and VoterTrove, a sister company to Align Media that worked in the political realm, providing services and advice to Republican candidates.

4. According to the Commission's investigation, Justin Gargiulo, a former employee of the Senate Republican Office, owns Align Media and VoterTrove, which are based in Austin, Texas. In October, 2015, the Connecticut General Assembly entered into a contract with Align Media. The contract, which ran through September 2016, authorized Align Media to manage the SRO website and digital media applications, to develop a new SRO website, and to provide consulting services. Per the contract, Align Media was paid: \$96,000 for management of the SRO website; \$14,000 for development of the new SRO website; and \$75 per hour for any consulting services.³ The General Assembly paid Align Media a total of \$110,796 in fiscal year 2016.⁴
5. Gargiulo explained the relationship between the two companies in his response to the Commission's initial enquiries. Align Media is a "digital services company that provides services to the SRO and various campaigns."⁵ VoterTrove is a "software company hired by campaigns to provide a platform to use various data, including email lists and voter files."⁶ In performing some of the functions to satisfy its contractual obligations with the SRO, Align Media used the VoterTrove software.⁷
6. Gargiulo maintained that any data that he augmented for political campaigns using the VoterTrove software was obtained via permissible sources and not through his access to data compiled by Align Media through its contract with the SRO.⁸ Absent a forensic

³ See Contract between Connecticut General Assembly, acting by its Joint Committee on Legislative Management, and Align Media LLC (SRO Web Media Consultant, Contract No. JCLM16REG0019) (encompassing agreement between General Assembly and Align Media LLC, which was awarded on October 13, 2015 and expired on September 30, 2016).

⁴ See <http://opencheckbook.ct.gov/#!/year/2016/explore/0-/service/LEGISLATIVE/0-barChart/department/Legislative+Management/0-barChart/vendor/ALIGN+MEDIA+LLC/0-relativeBarChartTable/program> (Last viewed May 2, 2018) (reflecting payments from State of Connecticut to Align Media LLC for FY 2016).

⁵ Letter from Chris K. Gober, Attorney for Justin Gargiulo, to Scott Branfuhr (Oct. 27, 2016) (responding to allegations in Looney-Duff complaint).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

evaluation of the computer servers used by the two companies, however, the Commission has no way to verify Gargiulo's statements.

7. Gargiulo said the SRO data that he used on behalf of campaigns was obtained via requests under Connecticut's Freedom of Information Act (FOIA) to the SRO for the relevant data available that was generally available to the public.⁹ Gargiulo said that the lists that he used in the VoterTrove software were either provided to him by the campaigns that hired VoterTrove, were obtained by him through requests to the Connecticut Secretary of the State or other state agencies, or were provided by a third-party who had obtained voter lists from the Secretary of the State.¹⁰
8. Commission staff contacted William "Bill" Evans, whom Gargiulo identified as one third-party source for a voter list that he had used on behalf of Republican candidates in Connecticut. Evans confirmed that he had purchased a voter list from the Secretary of the State in 2014 and had supplied it to Gargiulo. Evans stated that he was a "political operative" who enjoyed using the VoterTrove software and had supplied Gargiulo with the list.¹¹
9. During the 2016 election cycle, the Commission spoke with several campaigns about their use of lists that had been obtained from the SRO. In each of those instances, the candidate committees approached by the Commission about their use of SRO data was able to provide an FOIA request to the SRO for the relevant constituent contact information.¹²
10. In addition, commission staff investigated the circumstances behind an electronic message sent through the SRO's Align Media server inviting recipients to a fundraiser for candidates Joseph Markley and Robert Sampson. Staff scrutinized this incident because the Markley and Sampson candidate committees had applied for grants from the Citizens' Election Fund to support their campaigns for the State Senate and House of Representatives, respectively. Before recommending that the Commission authorized the release of grants to these two

⁹ *Id.*

¹⁰ *Id.*

¹¹ Email from Bill Evans to Scott Branfuhr (April 16, 2017) (answering questions related to his supplying voter list to Gargiulo in 2014).

¹² *See, e.g.*, In the Matter of a Complaint by Norman Needleman, Essex, SEEC File No. 2016-065, Findings & Conclusions (April 17, 2017) (dismissing complaint against Art Linares candidate committee for use of mailing list that Commission concluded was obtained via FOIA request).

candidate committees, staff had to determine if any disqualifying act had been committed by the campaigns related to this blast email.

11. Commission staff concluded that the email message was sent inadvertently from the Align Media account and that nothing in the conduct related to this message and the promotion of the joint Markley-Sampson fundraiser would disqualify the two committees from receiving grants.
12. That fundraising email also prompted, at least in part, this complaint to the Commission regarding the propriety of the relationship between the Garguilo companies and the SRO.
13. But as the Commission determined when it approved the Markley and Sampson committees' grants, nothing in the conduct related specifically to the fundraising email sent through the Align Media servers rises to the level of something that would deserve censure under Connecticut's campaign finance statutes.
14. According to the contract between the General Assembly and Align Media, the SRO engaged Align Media to update its website, to collect data from visitors to the SRO website, and to use that data to reach out to constituents on behalf of the members of the Republican Senate caucus. The contract between Align Media and the SRO required the media consultant to keep any information that it gleaned from its dual role as website designer and social media maven strictly confidential. Align Media was not permitted simply to share the data it gathered about visitors to the SRO website with its affiliated campaign-services company VoterTrove, according to the contract. Gargiulo stated that he had adhered to the contract restrictions on data sharing, but absent a forensic evaluation of the computer servers he used to perform the contract, the Commission has no way to verify his claims that he refrained from accessing and utilizing data improperly.
15. According to Gargiulo, other witnesses, and evidence gathered by commission investigators, the lists that formed the basis from which the VoterTrove platform was created for each of the relevant campaigns could have been obtained via avenues other than Gargiulo's access to the SRO database as the owner of Align Media.
16. Given the limited resources available to the Commission as well as the fact that the servers used by Align Media and VoterTrove are in Texas, the Commission cannot independently

confirm or refute Garguilo's claims that no information was shared improperly between his two companies.

17. Connecticut's campaign finance statutes regulate things of value given or received to promote or oppose candidates – "contributions" and "expenditures."¹³ Generally, only when an exchange of something of value qualifies as a "contribution" or "expenditure," bringing it within the ambit of chapters 155 or 157 of the Connecticut general statutes, does the Commission have jurisdiction to regulate that exchange.¹⁴
18. Public money spent to promote the activities or policies of elected officials, including members of the Connecticut General Assembly, largely fall outside of the definitions of "contribution" or "expenditure." A category of prohibited spending, however, involves spending public money to promote elected officials shortly before an election. General Statutes § 9-610 (d) bans certain communications that include references to incumbents, when the timing and content of those communications violate the terms included in the statute.¹⁵
19. Based on the Commission's grant validation process during the 2016 election cycle as well as additional investigation after receipt of the letter generating initiation of this matter – which did not include a forensic analysis of the two companies' computer servers – the Commission was unable to determine whether Connecticut's campaign statutes were violated in this matter.
20. Lacking clear evidence that public funds were used to promote a candidate in violation of Connecticut's campaign finance statutes, the Commission will take no further action on this matter.

¹³ See, e.g., General Statutes §§ 9-601a and 9-601b (defining "contributions" and "expenditures," respectively, for purposes of Connecticut's campaign finance statutes).

¹⁴ See, e.g., General Statutes §§ 9-7b (b) (2), (3), (4) and (6) (authorizing Commission to act on matters falling under chapters 155 or 157). Other statutory provisions apply and those cited only represent some instances where the Commission may specifically act to enforce campaign finance statutes.


¹⁵ See General Statutes § 9-610 (d) (making impermissible use of public funds to promote candidates in certain scenarios).

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the Commission will take no further action on this matter.

Adopted this 20th day of June of 2018 at Hartford, Connecticut.


Anthony J. Castagno, Chairman
By Order of the Commission