



## REPORT OF FINDINGS

Report Concerning Complaint from Supervisor Tom Patti  
Regarding Supervisor Katherine Miller  
(Code of Ethics)

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October 15, 2019

## TABLE OF CONTENTS

I.	Brief Introduction.....	3
II.	Summary of Findings.....	3
III.	The Investigative Background .....	3
	A.    Witnesses.....	3
	B.    Documents .....	4
	C.    Evidentiary Standard.....	4
	D.    Independence .....	5
IV.	Evidence, Analysis and Findings .....	5
	A.    Background – May 21, 2019 Board of Supervisors Meeting. ....	5
	B.    Supervisor Patti’s Perspective .....	6
	C.    Supervisor Miller’s Perspective.....	7
	D.    Analysis and Findings.....	9
V.	Conclusion .....	10

## I. BRIEF INTRODUCTION

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On September 11, 2019, the San Joaquin County Counsel’s office retained Lozano Smith law firm to conduct an investigation and make factual findings regarding a complaint of a potential violation of the San Joaquin County Board of Supervisors Code of Ethics. Supervisor Tom Patti (“Complainant” or “Supervisor Patti”) lodged a complaint that statements made by Supervisor Katherine Miller (“Respondent” or “Supervisor Miller”) may have violated the Code of Ethics. The complaint alleges that Supervisor Miller sent an email to members of the community labeling a proposal brought forward by Supervisor Patti at the May 21, 2019 Board of Supervisors meeting to create a “Supervisorial District Fund” for each of the five Board Members as a “slush fund.” The question is whether this may violate Section 3 g of the Code of Ethics which states: *“I will not make false charges or misleading statements for political advantage and I will hold those consultants, volunteers, and employees under my supervision to these same standards.”*

This is the detailed report of findings. It contains the information gathered, witness accounts and relevant documentation, as well as analyses and findings relating to the allegations. It is intended that this report will be a public document.

## II. SUMMARY OF FINDINGS

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After considering all of the evidence, the preponderance of the evidence shows that Supervisor Miller did not send a community-wide email that incorrectly portrayed the Supervisorial District Fund proposal. Supervisor Miller sent a May 18, 2019 email to one person that made several assertions about three agenda items up for discussion at the May 21 Board of Supervisors meeting. That email stated Supervisor Miller’s opposition to the three proposals in policy terms and used the term “slush fund” to describe the Supervisorial District Fund proposal. Supervisor Miller did not intend that the email would be distributed to others and only intended it for one recipient. It was sent by the recipient to others without Supervisor Miller’s knowledge. The subsequent publication of that email in an online Stockton Record newspaper article occurred without Supervisor Miller’s knowledge or approval, and the newspaper article inaccurately characterized the email as a direct community appeal by Supervisor Miller. Overall, the evidence shows that Supervisor Miller intended the use of the term to connote a poor policy idea with insufficient oversight. The preponderance of the evidence shows that persons assign multiple meanings to the term “slush fund” and that use of the term to describe a fund with no accountability falls within the range of common usage.

## III. THE INVESTIGATIVE BACKGROUND

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### A. Witnesses

Initial information was gathered from County Counsel Mark Myles, who had no personal knowledge of the events relating to the report. The following persons were interviewed:

Supervisor Tom Patti – September 25  
Supervisor Katherine Miller – October 1

Interviewees were admonished that they should not interfere with the investigation or attempt to influence witnesses. No other material witnesses were necessary to the investigation given the allegations and the facts related to those allegations. The rights of all parties were carefully considered to ensure fairness. The investigation proceeded under the good faith expectation that witnesses would answer truthfully.

Witness interviews were not recorded. Statements are cited as accurately as possible from notes. The conclusions in this report are drawn from the totality of the evidence and a thorough analysis of facts.<sup>1</sup>

## B. Documents

Relevant documentary evidence reviewed during the investigation is publicly available or is quoted in this report. The documentation includes:

Document
Board of Supervisors Code of Ethics – adopted August 4, 2015 <sup>2</sup>
Board of Supervisors Meeting Agenda – May 21, 2019 <sup>3</sup>
Board of Supervisors Meeting Agenda Packet – May 21, 2019 <sup>4</sup>
Board of Supervisors Meeting Minutes – May 21, 2019 <sup>5</sup>
Board of Supervisors Meeting Video – May 21, 2019 <sup>6</sup>
Stockton Record Newspaper Article regarding May 21, 2019 BOS Meeting <sup>7</sup>
Email from Supervisor Miller (relevant text quoted below)

<sup>1</sup> I considered and gave appropriate weight to information that might be considered to be hearsay in legal proceedings.

<sup>2</sup> See <<https://www.sjgov.org/WorkArea/DownloadAsset.aspx?id=27962>> [as of October 13, 2019]

<sup>3</sup> See discussion items 1, 2, and 3

<<http://sanjoaquincountyca.iqm2.com/Citizens/FileOpen.aspx?Type=14&ID=2292&Inline=True>> [as of October 13, 2019]

<sup>4</sup> See pages 1007 to 1014, inclusive

<<http://sanjoaquincountyca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2292&Inline=True>> [as of October 13, 2019]

<sup>5</sup> See <<http://sanjoaquincountyca.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2244&Inline=True>> [as of October 14, 2019]

<sup>6</sup> See

<<http://sanjoaquincountyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2283&Format=Minutes>> [as of October 14, 2019]

<sup>7</sup> See <<https://www.recordnet.com/news/20190520/rescinding-code-of-ethics-among-items-on-sj-supervisors-agenda>> [as of October 14, 2019].

### **C. Evidentiary Standard**

Evidence was reviewed, compared and analyzed under a “preponderance of the evidence standard.” A preponderance of the evidence means the evidence, when weighed with the evidence opposed to it, has the more convincing force and the greater probability of truth. This is a qualitative, not a quantitative, standard.

### **D. Independence**

The County of San Joaquin and its representatives allowed me discretion to conduct the investigation as I determined to be necessary. I was given access to requested witnesses and documents. No party interfered with, or attempted to influence, the findings in this report.

## **IV. EVIDENCE, ANALYSIS AND FINDINGS**

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### **A. Background – May 21, 2019 Board of Supervisors Meeting**

The May 21 meeting agenda of the Board of Supervisors contained three related discussion items:

1. BOS - Board Discussion to Consider a Monthly Stipend for Public Functions.
2. BOS - Board Discussion and Consideration for Creating Supervisorial District Fund.
3. BOS - Rescind Resolution R-15-117, the Resolution Establishing The San Joaquin County Board of Supervisors Code of Ethics.

All three items were brought forward by Supervisor Patti with supporting letters included as part of the agenda packet.<sup>8</sup> According to the minutes and video of the May 21 meeting, there was no discussion or action on Item 1. The item was withdrawn.

Regarding Item 2, Supervisor Patti’s supporting letter described the proposal as a “discretionary fund account” for each Board Member. Use of the funds “would be at the discretion of the individual Board Member, subject to the approval of the majority of the Board.” The intent was to fund “projects or activities that will primarily result in public benefits.” The letter detailed how the Board of Supervisors had established Supervisorial District Funds in 2003-04, that over \$700,000 in projects had been approved using the Supervisorial District Funds, and that the funds were discontinued in the fiscal year 2008-09 budget.

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<sup>8</sup> See pages 1007 to 1014, inclusive

<http://sanjoaquincountyca.igms.com/Citizens/FileOpen.aspx?Type=1&ID=2292&Inline=True> [as of October 13, 2019]

The Board discussed Item 2 and Board Member Miller spoke against it. Other board members spoke for and against the item.<sup>9</sup> After discussion, the Board determined not to consider the request at that time.

Item 3 was considered but was not approved by the Board of Supervisors.

## **B. Supervisor Patti's Perspective**

Supervisor Patti's complaint was based on an online Stockton Record newspaper article asserting that Supervisor Miller emailed community members about Items 1, 2, and 3. An excerpt from the referenced Stockton Record article reads:

Supervisor Kathy Miller already has made clear her position on Patti's ideas. She sent a mass email to community members Saturday encouraging them to attend today's meeting to speak out against Patti's proposals.

Miller's email says Patti's proposals "should be of great concern to everyone who values open and transparent government."

She added that Patti wants "a budget to pay for Supervisors to attend community events; to create a slush fund for each Supervisor; and to rescind the Code of Ethics, adopted in 2015!"

"I've alerted the SJ Grand Jury Assn. But thought there might be other proponents of good government who would come to the meeting and speak out against this bizarre and regressive suite of proposals."

Supervisor Patti was concerned that this statement violated section 3 g of the Code of Ethics. Supervisor Patti has not received or viewed the email referenced in the article, but was concerned about the existence of a public statement by Supervisor Miller and a subsequent media report calling the proposal a "slush fund."

Supervisor Patti noted that, to his knowledge, this statement has not been reproduced elsewhere or used in political campaign materials or otherwise re-published. The concern is that the statement had a wide distribution to thousands of persons and it will linger in perpetuity; it may be used in a misleading way that would undermine Supervisor Patti's reputation and be perceived as an attack on his ethics, integrity, and character. He noted that a similar proposal for Supervisorial District Funds was previously approved and used by the Board of Supervisors for several years, and similar systems are currently in use by other municipal governments.

Supervisor Patti was concerned that the term "slush fund" connotes funds used for illicit political activity. The proposal brought forward explicitly states that all projects proposed by an

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<sup>9</sup> Although not part of the Code of Ethics complaint, for context it is noted that Board Member Bob Elliot spoke against the item and stated that it can create the perception of a "slush fund"; other board members did not remark on this characterization. See meeting video at approximately 03:52:  
<<http://sanjoaquincountyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2283&Format=Minutes>>  
[as of October 14, 2019]

individual supervisor must be approved by a majority of the Board of Supervisors, thus Supervisor Patti feels the projects will be subject to the same measures of transparency that all expenditures receive.

Supervisor Patti also noted that, since the May 2019 meeting, approximately 15 to 20 people have commented to him about the fact that his “slush fund” idea was not approved.<sup>10</sup>

### C. Supervisor Miller’s Perspective

Supervisor Katherine Miller provided context regarding the email referenced in the May 2019 Stockton Record article. Supervisor Miller sent the referenced email from a personal email account on Saturday May 18, 2019. It was sent to one person, a founder of a local organization known as the “Good Government Committee.” The Committee is a community effort in partnership with the University of the Pacific and Supervisor Miller has been involved with the Committee for many years. Among other things, the Committee puts on a series of ten weekly policy-oriented sessions. Community members lead a public discussion about topics of local concern such as economics, demographics, public safety, or education. The Committee’s speaking sessions have been offered as continuing education classes through the University of the Pacific. The Committee has sponsored several individuals by paying a portion of the tuition for the classes. One of the Committee’s aims is to educate persons involved in politics and public affairs. One goal is to foster a larger group of knowledgeable candidates for elective office, as well as appointees to commissions.

Supervisor Miller noted that she sent the email to a founder of the Committee with the intent that her colleague would invite people to come to the Board of Supervisors’ May 21 meeting and speak to Items 1, 2, and 3 on the agenda. Her colleague maintains contact information for many Good Government Committee members and involved parties. Supervisor Miller was “stunned” when the recipient forwarded her email to an unknown number of community members. Supervisor Miller had not intended for her email to be distributed to others and had intended that the recipient would send an original, different message inviting persons to the May 21 meeting.

The email states:

**From:** RECIPIENT NAME<sup>11</sup> <[RECIPIENT\\_NAME@comcast.net](mailto:RECIPIENT_NAME@comcast.net)>  
**Date:** May 18, 2019 at 12:47:42 PM PDT  
**Subject:** Fwd: Urgent Good Gvt Issue  
**Reply-To:** RECIPIENT NAME <[RECIPIENT\\_EMAIL@comcast.net](mailto:RECIPIENT_EMAIL@comcast.net)>

*If you are interested in honest, open government please show uo [sic] on Tuesday to show your opposition to this unethical proposal. See below.*  
RECIPIENT NAME

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<sup>10</sup> No other material witnesses or documents were identified.

<sup>11</sup> The name and email address of the recipient of Supervisor Miller’s message are redacted for confidentiality reasons.

*RECIPIENT NAME,*

*Tom Patti has agendized 3 discussion/action items for Tuesday that should be of great concern to everyone who values open and transparent government. He wants (straight from the Sawyer/Silva playbook) a budget to pay for Supervisors to attend community events; to create a slush fund for each Supervisor; and to rescind the Code of Ethics, adopted in 2015!*

*I've alerted the SJ Grand Jury Assn. But thought there might be other proponents of good government who would come to the meeting and speak out against this bizarre and regressive suite of proposals.*

*They probably won't be discussed until around 10am, following Consent and 2 public hearings.*

*Kathy  
Sent from my iPhone*

As is shown from the email chain, Supervisor Miller emailed her colleague directly and then her colleague passed on the message to others by emailing to the person's own email account as the primary recipient and blind copying the other recipients. Supervisor Miller stated that she did not intend for her use of the term "slush fund" to be redistributed. Supervisor Miller did not ask her colleague to retract the email, noting that she would use that characterization ("slush fund") in a public setting. Supervisor Miller recounted that before the Stockton Record published its May 2019 article quoting her email, neither the Stockton Record reporter nor anyone else from the Stockton Record contacted her. She was unaware of the article until after its publication. Supervisor Miller noted that the article's statement that she had emailed community members was inaccurate, as she had only emailed one person.

In addition, the night before the May 21 Board of Supervisors meeting, Supervisor Miller got in touch with the grand jury foreman. When the Board adopted the Code of Ethics in 2015, the grand jury had made strong recommendations about putting a code of ethics in place. The grand jury had thanked the Board for adopting the Code of Ethics. Supervisor Miller wanted the grand jury to know and to have the chance to express their views on these items at the Board of Supervisors meeting.

Supervisor Miller felt that bringing all three items together was a step backward. The Supervisorial District funds would not have sufficient oversight and would not be appropriate in today's climate that is concerned about transparency; it would be an inappropriate use of taxpayer dollars. As for the term "slush fund," Supervisor Miller defines it as a fund of taxpayer dollars that is available to a public official with little or no accountability. Supervisor Miller did not intend to suggest that the fund would be illegal.

Supervisor Miller also noted that she has not used the term "slush fund" to describe these proposals in campaign or political activity, nor has she disseminated the email further. She is not aware that her characterization has been used against Supervisor Patti in any setting, whether in

political campaigns or otherwise. Supervisor Miller has not heard from others that they perceived the term to describe an illegal fund. Supervisor Miller's intent was to convey that the proposals were not sound policy ideas.<sup>12</sup>

#### **D. Analysis & Findings**

A preponderance of the evidence shows that there was no intent by Supervisor Miller to suggest to the public that the Supervisorial District Fund proposal was illegal or unethical. I make these findings for the following reasons.

First, the email quoted in the Stockton Record article was mischaracterized as a direct appeal from Supervisor Miller to the community. In fact, it was a private email from Supervisor Miller to one person who, without Supervisor Miller's approval or knowledge, sent it to community members. The email then made its way to the Stockton Record. Second, Supervisor Miller's email expressed concern about all three proposals on the agenda and stated others should be concerned about "open and transparent government." Supervisor Miller's email also characterized the agenda items as a "bizarre and regressive suite of proposals." These words indicate a policy disagreement. Taken in context, the wording used does not suggest illegal or illicit activity.

Third, although Supervisor Patti has experienced some commentary from the public about the use of the term "slush fund," it was not used by Supervisor Miller in other contexts. Thus no apparent political advantage was sought or obtained by use of this term. Fourth, Supervisor Miller stated that her intent was not to suggest illegal activity but to describe poor policy ideas; no evidence counters this stated intention.

Last, there is no universal definition of the term "slush fund." Readily available dictionary definitions variously define the term as follows:

"1: a fund raised from the sale of refuse to obtain small luxuries or pleasures for a warship's crew

2: a fund for bribing public officials or carrying on corruptive propaganda

3: an unregulated fund often used for illicit purposes."

(Merriam-Webster online dictionary < <https://www.merriam-webster.com/dictionary/slush%20fund>> [as of October 14, 2019])

"Money that is set aside for undesignated purposes, often corrupt ones, and that is not subject to financial procedures designed to ensure accountability."

(Black's Law Dictionary (8th ed. 1999) p. 1422.)

"1. A fund raised for undesignated purposes; especially: a. a fund used by a group, such as office employees, for entertainment or the like. b. A fund raised by a political group for bribery or other corrupt practices."

(American Heritage Dictionary (1973) p. 1219.)

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<sup>12</sup> No other material witnesses or documents were identified.

The existence of various definitions and their diverse meanings show that persons can reasonably disagree over the term's usage. Therefore, use of the term to connote a fund with no accountability falls within the range of common definitions and usage.

## V. CONCLUSION

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Thank you for contacting us to conduct this investigation.

Sincerely,

LOZANO SMITH

A handwritten signature in black ink that reads "Thomas E. Gauthier". The signature is written in a cursive, slightly slanted style.

Thomas E. Gauthier