


Special Master
Ronald V. Swanson
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**REPORT AND RECOMMENDATION
TO THE FLORIDA SENATE**

A handwritten signature in cursive script that reads "Ronald V. Swanson". The signature is written in black ink and is positioned above a horizontal line.

Ronald V. Swanson, Special Master

19 Dec. 2017
Date

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COMPLAINT

By sworn complaint dated November 5, 2017, the Florida Senate Rules Chair was advised by Complainant, Rachel Perrin Rogers, of alleged inappropriate conduct by Respondent, Senator Jack Latvala, in violation of Florida Senate Rule 1.35. [Ex. A] Specifically, the sworn complaint alleges that Senator Latvala engaged in inappropriate acts toward Ms. Rogers and comments about Ms. Rogers's body during the 2013 and 2014 Legislative Sessions. The alleged 2013 and 2014 acts did not involve physical contact. Ms. Rogers also asserts that in February of 2015, Senator Latvala rubbed her leg while she was sitting alone at a bar in the Governors Club Lounge, Tallahassee, Florida. Ms. Rogers states this incident, along with unrelated personal reasons, led to submission of her resignation. Additionally, Ms. Rogers alleges Senator Latvala hugged her in an unwelcome manner at least 4 times during the 2016 and 2017 Legislative Sessions, "assaulted" her inside Elevator 13 during the fall of 2017, and touched another female's breast, in her presence, in April of 2017.

APPOINTMENT OF SPECIAL MASTER

On November 16, 2017, Pursuant to Florida Senate Rule 1.43(1)(b), The Honorable Ronald V. Swanson, a retired Judge, who last served on the State of Florida's First District Court of Appeal, was appointed Special Master to conduct an investigation into allegations contained within the sworn complaint. In addition, the Special Master was tasked with giving reasonable notice to the Respondent, and granting Respondent an opportunity to be heard in accordance with Senate Rule 1.43(1)(b). The Special Master was to submit a Report and Recommendation to the State of Florida Senate Rules Chair, as soon as practicable after the close of the investigation.

NOTICE

Pursuant to Senate Rule 1.43(1)(b), Respondent was provided oral notice of the Special Master investigation on November 16, 2017, followed by written notice on November 19, 2017. [Ex. B] Respondent was given a redacted copy of the sworn complaint on November 16, 2017, was allowed to review the sworn complaint (with Complainant's name redacted) on November 17, 2017, and was orally provided the name of Complainant (at the direction of Counsel for the Florida Senate) on November 17, 2017. Respondent's counsel executed written agreements on his behalf to maintain the confidentiality of the sworn complaint unless and until disclosure was permitted by Senate Rule and Florida law. [Ex. C] On December 6, 2017, Senator Latvala was given

notice of a final opportunity to present evidence to the Special Master [Ex. D] of which he availed himself on December 7, 2017. [Latvala II]

SPECIAL MASTER INVESTIGATION

Immediately after the Special Master's appointment, this investigation, as contemplated by Rule 1.43 of the Florida Senate Rules, began. The purpose of the investigation was to determine if there was probable cause to believe conduct by Senator Latvala, as alleged in the sworn complaint, violated Florida Senate Rule 1.35. Senate Rule 1.35 states:

Every Senator shall conduct himself or herself to justify the confidence placed in him or her by the people and, by personal example and admonition to colleagues, shall maintain the integrity and responsibility of his or her office.

Complainant's sworn statement was taken on November 17, 2017, and again on December 1, 2017. Senator Latvala voluntarily appeared before the Special Master on November 29, 2017, and December 7, 2017, and provided testimony. [Latvala I & II] Additional witnesses provided sworn and unsworn statements, either voluntarily or pursuant to subpoena. All testimony has been transcribed and is listed in the Index to Testimony.

Additionally, locations relevant to this inquiry were visited. Photographs were taken and documentary evidence collected. Documents submitted by counsel for Respondent and Complainant were reviewed. Material evidence is discussed herein and included in the Index to Exhibits. Additional evidence considered but not cited in this report is listed in the Index to Additional Evidence.

FINDINGS OF FACT

Background

1. On November 5, 2017, Ms. Rogers filed a sworn complaint of sexual harassment against Florida State Senator Jack Latvala. The sworn complaint alleges Senator Latvala violated Rule 1.49 of the Administrative Policies and Procedures (of the Florida Senate) and Rule 1.35 of the Senate Rules. [Exhibit A]

2. Ms. Rogers is a citizen of the State of Florida over the age of eighteen, and female. At all times discussed in the sworn complaint, Ms. Rogers was an employee of the Florida State Senate. [Rogers I p. 8; Rogers Aff. ¶ 1]

3. Senator Latvala represents District 16 in the Florida Senate. District 16 presently consists of parts of Pasco and Pinellas Counties. [Latvala I p. 16] Senator Latvala has served continuously in the Florida Senate since 2010. Previously, he served as a Florida Senator from 1994 through 2002. [Latvala I p. 8-10] Until recently, Senator Latvala served as Chair of the Appropriations Committee. [Latvala I p. 10]

4. Senator Latvala's date of birth is November 3, 1951. He is male. [Latvala I p. 7]

5. Ms. Rogers began employment with the State of Florida in the year 2000. [Rogers I p. 9].

6. Ms. Rogers first met Senator Latvala in 2010, "when he came back" to the Florida Senate. She knows him personally and has worked with him professionally since that time. [Rogers I p. 13] When Ms. Rogers first met Senator Latvala, she was working as Senator Paula Dockery's Senior or Chief Legislative Assistant. [Rogers I p. 14]

7. At the time of her November 17, 2017, sworn testimony, Ms. Rogers worked in the Florida State Senate Office Building as Chief Legislative Assistant and Communication Director for the Florida State Senate Majority Leader, Wilton Simpson. [Rogers I p. 9-10] Ms. Rogers first began working for Senator Simpson in November, 2012. [Rogers I p. 10]

8. From 2010 forward, Ms. Rogers had occasional contact with Senator Latvala, both professionally and in social situations. [Rogers I p. 14]

9. Ms. Rogers testified that during the 2013 and 2014 Legislative Sessions, Senator Latvala engaged in inappropriate verbal and non-verbal behavior towards her. [Rogers I p. 15-16]

10. According to Ms. Rogers, such conduct progressed after the 2013 and 2014 Legislative Session to unwanted physical contact, culminating in what she described as an assault on Elevator 13 during the week of October 9, 2017, at the Florida State Capitol. [Ex. A ¶ 7; Ex. E]

Verbal / Non-Verbal Incidents

11. In her sworn complaint, Ms. Rogers states:

Over the last four years, I have experienced multiple occurrences of sexual harassment in the Capitol building and local dining establishments by Jack Latvala. Some incidents during the

legislative sessions of 2013 and 2014 were verbal in nature. Senator Latvala made unwelcome and unwanted comments about my clothing, my breasts, and my legs. If I had to approach him about a bill or an issue on behalf of my boss, he would stare at my chest and look me up and down without giving any indication if he was listening to the public policy issue I was there to discuss. On one occasion, I responded to his comments about my body and told him if he continued to comment on my physical appearance, I would respond by calling him what he is: an obese, disgusting and dirty old man. My reply, intended to discourage him, instead had the opposite effect. He stopped making verbal comments and on at least six occasions since that time, subjected me to unwanted physical touching/grabbing/groping.

[Ex. A ¶ 4]

12. On November 17, 2017, Ms. Rogers testified to three specific incidents during the 2013 and 2014 Legislative Sessions, when Senator Latvala made unwanted and inappropriate comments, sounds, or gestures towards her. She also testified "...if I had to talk with him 100 times those two years, probably at least 30 of those times he made me feel uncomfortable with either the way he was looking at me or he made comments about my appearance, what I was wearing, that I was attractive." [Rogers I p. 20-22] Ms. Rogers testified it was part of her job, as an employee of the Florida Senate and on behalf of her Supervisor, Senator Wilton Simpson, to interact with Senator Latvala. [Rogers I p. 21] The Special Master finds that it was part of Ms. Rogers' duties to interact with Senator Latvala. Because Ms. Rogers was an employee of the Florida State Senate and Senator Latvala was an elected Florida State Senator, there is a disparity in power and authority between Ms. Rogers and Senator Latvala.

13. Ms. Rogers described three incidents (in order of recall) as follows:

A. Incident 1: While working at the Senate Office Building in 2013, Ms. Rogers went "to lobby Senator Latvala on behalf of one of Senator Simpson's bills..." [Rogers I p. 17-19] She found him in a kitchen area of the fourth floor of the Senate Office Building. No one else was present. She was there talking to him about a public policy issue, and Senator Latvala "was looking [her] up and down and it was clear he wasn't listening." Senator Latvala made a growling sound like "MMMM" as he looked her up and down. [Rogers I p. 18-19]

B. Incident 2: While at Clydes & Costello's, a bar within a short walk from the Florida State Capital Building located on Adam's Street, Ms. Rogers approached a table at which Senator Latvala was sitting to speak to someone at the table, and Senator Latvala said something to Ms. Rogers, to the effect of, "have you lost weight" and you're "looking really hot." [Rogers I p. 22-29] Ms. Rogers made no response and left Clydes shortly thereafter. This event occurred in the evening hours at some time during the 2013 – 2014 Legislative Sessions. The Complainant could not recall who else might have been present at the time of this incident. [Rogers I p. 22-29]

C. Incident 3: In 2014, sometime after work, Ms. Rogers encountered Senator Latvala on the sidewalk outside of the Governors Club, a private club in Tallahassee, Florida, within a short walk of the Florida State Capital Building. [Rogers I p. 31-37] Senator Latvala, who appeared to be alone, was in the immediate proximity of Complainant awaiting the Governors Club valet service to bring his car. [Rogers I p. 33] Ms. Rogers was also alone. Ms. Rogers testified the Senator made a sound like "MMMM," commented on her dress, and said [she] was "looking very good." [Rogers I p. 35-36] According to Ms. Rogers, these types of verbal comments (about her appearance, her body, loss of weight or weight gained) had, at the time of this incident, happened "multiple times." [Rogers I p. 35-36] "[He] looked [her] up and down. His eyes lingered." [Rogers I p. 36] Ms. Rogers then told Senator Latvala "if [he] continued to speak to [her] that way, she would very publicly tell him he was an obese, nasty, dirty old man." [Rogers I p. 36] At that point, Senator Latvala left the Governors Club. Ms. Rogers entered the Governors Club, "sat and ordered a drink." [Rogers I p. 37]

14. Senator Latvala testified that: "In the 16 or so years...." that he had been in the Senate, he had received sexual harassment training. He also testified... "I think it just kind of is common sense thing with me." [Latvala I p. 32] I "don't want to say or do anything that would make, you know, people of the opposite sex uncomfortable, certainly don't want to touch them against their will." [Latvala I p. 33]

15. Senator Latvala agreed that in a recent media interview he stated: "Do I let my mouth overload my good sense now and then and maybe say, quote, 'you are looking good today. You've lost weight. You're looking hot today.' Yeah. But I haven't touched anybody against their will." [Latvala I p. 33-34] The Senator further testified, in pertinent part, "I think, in context, the 'looking hot today' would only apply to people I was very comfortable with... I am, you know, 66 years old, and you—and being here as long as I am, I know who, you know, who gets offended and who appreciates, you know,

comments like that.” [Latvala I p. 34] Senator Latvala’s statements to the media are corroborative of the types of comments about which Ms. Rogers has complained. Since Ms. Rogers’ complaints concerning unwanted comments on the part of Senator Latvala pre-date his admissions to the media, fabrication on the part of Complainant is unlikely.

16. Senator Latvala testified “I am not going to, you know, I am not going to deny that I have been known to, you know, say things like that.” [Latvala I p. 34] However, Senator Latvala denied making comments like those discussed in paragraph 15 to Ms. Rogers during the 2013-2014 Legislative Sessions. [Latvala I p. 34] Senator Latvala stated that based on his knowledge of her, “she is someone who would be very unpredictable with any kind of remarks like that.” [Latvala I p. 35]

17. Senator Latvala did recall, on at least one occasion during the 2013-2014 Legislative Sessions, talking to Ms. Rogers in the Senate Office Building, about work related matters. He denied making any inappropriate comments, gestures, or looks toward Ms. Rogers on that occasion. [Latvala I p. 40]

18. Senator Latvala acknowledged occasionally visiting Clydes during the 2013-2014 Legislative Sessions [Latvala I p. 41], but did not recall an incident where he said to Ms. Rogers, “Have you lost weight? You look hot.” [Latvala I p. 42] He further stated that “it doesn’t sound right ... because I never sit in there.” [Latvala I p. 42]

19. Senator Latvala acknowledged that he routinely uses Governors Club valet parking; however, he did not recall making a “MMMM” sound at Ms. Rogers, or saying “you are looking good.” [Latvala I p. 43-45] He denied the comment. [Latvala I p. 43]

20. The Special Master finds that Senator Latvala has made the kinds of comments to women which are described by Ms. Rogers. Senator Latvala does not recognize that these types of comments can be offensive. He testified, “I am not going to deny that I have been known to, you know, say things like that. And I am—you know, if that falls in the realm of harassment, then that’s—that’s new to me.” [Latvala I p. 34] The Special Master finds Ms. Rogers’ testimony concerning unwanted comments, as directed toward her by Senator Latvala during the 2013 and 2014 Legislative Sessions credible.

21. Senator Latvala does not recall Ms. Rogers saying to him, on any occasion, that “if you continue to say things like that to me, I am going to publicly call you an obese, nasty old man.” [Latvala Tr. 43] He testified, “Absolutely not. I would remember that, A; and B, I would address that conduct so that it never came up again. I am not an idiot.” [Latvala I p. 43-44]

February 17, 2015 Incident

22. Ms. Rogers's sworn complaint asserts that in February of 2015, Senator Latvala approached her as she sat alone at the Governors Club bar; draped one arm across the back of her chair; rested his feet on the frame of her chair, and began to rub her leg. This upset her and shortly thereafter she fled the bar. [Ex. A ¶ 5; Ex. F p. 9-10; Latvala I, Ex. 2-3]

23. Ms. Rogers provided sworn testimony about the alleged February 17, 2015, encounter. She said Senator Latvala sat down next to her at the bar, draped an arm across the back of her chair, and "then he put his hand down and just started rubbing the top of" the "thigh area" of her left leg. [Rogers II p. 53-54] He was rubbing his hand "back and forth." [Rogers II p. 54]

24. Ms. Rogers testified she saw Caitlin Murray, a friend and associate, at the Governors Club immediately after her encounter with Senator Latvala on the evening of February 17, 2015. [Rogers II p. 56] Ms. Rogers was crying and told Ms. Murray "Jack Latvala had upset" her. [Rogers II p. 57]

25. Caitlin Murray's sworn testimony was taken on November 30, 2017. Ms. Murray was a member of the Governors Club in 2015. She knew Senator Latvala and Ms. Rogers and had seen them both at the Governors Club during the 2015 Legislative Session. Ms. Murray recalled a time when she entered the Governors Club lounge and found her friend, Ms. Rogers, sitting at the bar alone, "very upset." Ms. Rogers was "...extremely distraught. Crying." [Murray p. 28]

26. Ms. Murray testified that on this evening at the Governors Club bar, Ms. Rogers relayed she was "ready to leave her job because she was so upset, and it was people like Senator Jack Latvala." [Murray p. 31] According to Ms. Murray's testimony, Ms. Rogers said "I swear to God, he uses his body to block people and to block what he is doing with his hands." [Murray p. 31] Ms. Murray's testimony corroborates Ms. Rogers' account of the incident, in that Ms. Rogers uttered an emotionally charged complaint about the touching, at or near the time of the incident.

27. On Wednesday, February 18, 2015, at 12:33 p.m., Ms. Rogers sent an e-mail to Senator Wilton Simpson, her immediate supervisor, which stated, in pertinent part,

Yes, I am under personal stress and that isn't your fault or problem.
But even without that I would not be okay continuing to work for the

Senate, it is a cesspool. I was trying to clear my head last night in GC (Governors Club) and I couldn't even do that because of Jack Latvala. I left there very upset.

It would be wrong for me to give you some sort of ultimatum so I won't do that. The only choice that leaves me with is resignation.

[Rogers III, Ex. 4] This e-mail sent from Ms. Rogers to Senator Simpson, the day after the February 17, 2015, Governors Club incident, further corroborates Ms. Rogers testimony about that encounter. [See also, Johnson p. 26-30]

28. Ms. Rogers resigned her position as Simpson's Chief Legislative Aide in February of 2015. [Ex. G p. 1; Rogers III, Ex. 4] At the request of Senator Simpson, Ms. Rogers returned to full time employment in Senator Simpson's Office effective December 10, 2015. [Ex. G p. 2; Rogers III p. 33-34]

29. David E. Ramba, an attorney and member of the Governors Club, by written declaration dated December 5, 2017, stated that on February 18, 2015 [sic], he was at the Governors Club lounge and saw Ms. Rogers sitting alone at the bar, crying. [Ex. H ¶ 6] Mr. Ramba also recalled seeing "Senator Latvala who had been sitting in one of his regular areas with a group of friends at the big couch to the left of the front door, walk up to Ms. Rogers, speak to her for no more than two minutes, order himself a drink and return to his friends." [Ex. H ¶ 7] In a subsequent recorded unsworn interview, dated December 6, 2017, Mr. Ramba stated that on the evening in question, he was within close proximity to Ms. Rogers and Senator Latvala. Their backs were to him for about two minutes and they were standing shoulder to shoulder. Mr. Ramba did not watch them continuously and he could not see their hands. [Ramba p. 13. See also, Latvala II, Ex. 1]

30. Senator Latvala testified that he is a long-standing member of the Governors Club. It is common for him to go to the Governors Club when in Tallahassee. He did go there during the 2015 Legislative Session and he recalled an incident "where (he) walked up to the bar to get a drink, and (Ms. Rogers) was sitting next to (him). [Latvala I p. 69] Senator Latvala did not recall the specifics of any conversation with Ms. Rogers from that event. Senator Latvala recalled Ms. Rogers was seated on a barstool. [Latvala I p. 72] He does not remember if he stood or sat next to her. [Latvala I p. 72] He does not remember her crying. [Latvala I p. 73] Senator Latvala further stated if she had been crying, he would remember that. [Latvala I p. 72, 73]. The Special Master finds

that this testimony by Senator Latvala rebuts any suggestion that he approached Ms. Rogers on this occasion, to comfort her because she was upset.

31. Senator Latvala testified he did not touch Ms. Rogers at the bar. He testified: “I would have never done that. I have never—I have never touched her.” [Latvala I p. 73].

32. Senator Latvala later testified:

You know, have in eight—seven years have I hugged her at some point in time with a half hug that might have got my hand on her side, I can’t say that I haven’t. But when you talk about rubbing her breast, or rubbing her rear end, I can say I have never done that.

[Latvala I p. 76]

33. Senator Latvala defined a “half hug” as the way you greet people socially in the Capitol. “Not a bear hug.” [Latvala I p. 76]

2016 – 2017 Legislative Sessions

34. Ms. Rogers testified that during the 2016 through 2017 Legislative Sessions, Senator Latvala encountered her at the Governors Club near the women’s room at the far back corner of the establishment, [See Ex. F p. 8-12], and touched her in an unwelcome manner. She testified:

He leaned in and sort of blocked my path and stopped me.... And he reached around and squeezed....his hugs were never, like, a, you know, front—frontal arms around your back. He would put one arm around and squeeze on the midsection and just—very tight and— [with] his hand.

[Rogers II p. 68] Ms. Rogers further testified Senator Latvala “grabbed” her midsection, moved his hand upwards, and touched the underside of her breast. [Rogers II p. 69-70] Senator Latvala had no recollection of the event and testified, “No, I wouldn’t have done that.” [Latvala I p. 76]

35. Ms. Rogers testified to another 2017 incident of unwanted physical contact between herself and Senator Latvala at the Governors Club. She said that after work, she walked to the Governors Club with her boss, Senator Wilton Simpson. Once at the Governors Club, Ms. Rogers did not remain with Senator Simpson, as he was there to

meet others. Ms. Rogers testified as she sat alone at the bar, Senator Latvala approached her, talked with her briefly, and then “reached around and did the side grab.” [Rogers II p. 78] She testified Senator Latvala touched her abdomen and midsection; he was squeezing and he moved his hand to the underside of her breast. [Rogers II p. 79-80]

36. Senator Latvala testified he routinely frequented the Governors Club and on occasion, he saw Ms. Rogers there during the 2016-2017 Legislative Sessions. [Latvala I p. 69, 75]

37. Senator Latvala testified: “I have not touched [Ms. Rogers] inappropriately on any occasion.” [Latvala II p. 8]

38. Ms. Rogers testified that during the 2017 Legislative Session there were two instances of unwanted touching in the Senate Majority Office Member’s Lounge within the Senate Office Building. [Rogers II p. 84]

39. The first incident memorably centered on donuts and occurred in 2017. [Rogers II p. 87] Camille Johnson, a recent graduate of Florida State University, was working within the office of the Florida Senate Majority Leader at the time of the incident. She has worked in that office since February, 2017. [Johnson p. 7]

40. Ms. Johnson gave sworn testimony on November 21, 2017. She knows and works with Ms. Rogers and can identify Senator Latvala. [Johnson p. 9, 16] Ms. Johnson recalled three interactions with Senator Latvala in the Majority Leader’s Office; all concerned food. [Johnson p. 17]

41. Regarding one instance, Ms. Johnson testified: “It was just a time when we didn’t have donuts. And he liked donuts, but I was never in charge of buying donuts for the office.” [Johnson p. 18] “I think I texted Rachel about it, just saying like he’s looking for donuts again.” [Johnson p. 19] Senator Gainer confirms Senator Latvala “loves donuts.” [Composite Ex. I, G. Gainer p. 10]

42. After Ms. Johnson contacted Ms. Rogers, “Rachel came in there” and clarified “we didn’t have donuts.” [Johnson p. 21] Ms. Johnson recalls Ms. Rogers and Senator Latvala being in the Member’s Lounge at that point but that she “probably walked away... to evade the situation.” [Johnson p. 22] Before walking away, Ms. Johnson did not observe Senator Latvala touch Ms. Rogers or hear him make any inappropriate comments. [Johnson p. 21] Ms. Johnson’s testimony corroborates that Senator Latvala and Ms. Rogers were alone in the Member’s Lounge as Ms. Rogers testified.

43. Ms. Rogers testified about the donut incident. She was informed by the receptionist, Camille Johnson, that Senator Latvala was “very angry because we did not have donuts, and she asked if I could go back and talk to him.” [Rogers II p. 87] One other witness confirmed that Senator Latvala can become upset if donuts are not available. [Rogers III, Ex. 7]

44. In response to Ms. Johnson’s request, Ms. Rogers went to the Member’s Lounge, saw Senator Latvala and asked him, “Senator, what’s the problem?” [Rogers II p. 91] Ms. Rogers testified that at that point, no one else was in the room. After some discussion about food menu options, Ms. Rogers testified that she said: “I’m very sorry about the donut situation. We’ll see what we can do about that.” [Rogers II p. 92] She states that Senator Latvala responded: “Okay. Great. I appreciate that. I always appreciate you.” [Rogers II p. 92] She testified before he turned to go away, it “was less of a grab than the previous times. But he just briefly squeezed on my love handle section.” [Rogers II p. 92-93]

45. During his sworn statement on November 29, 2017, Senator Latvala was asked if he recalled an incident in 2017, where he went to the Member’s Lounge and became upset because there were no donuts. While he testified he had no specific recall of the event, Senator Latvala said it was possible such an event had taken place. [Latvala I p. 64-66]

46. When asked if he recalled being alone with and hugging or touching Ms. Rogers in the Members Lounge at or near a time when there had been a discussion about donuts, Senator Latvala testified:

...I find that just impossible to believe that that happened. I mean, I would remember if I would have done it. I wouldn’t have hugged her at the end of a conversation. I wouldn’t have hugged her period. I mean, I just, I don’t hug Rachel. I haven’t ever hugged Rachel.

[Latvala I p. 67-68]

47. Ms. Rogers also testified about a second 2017 incident in the Senate Majority Leader’s personal office, within the Senate Majority Leader’s Office suite, where she had an unwanted physical encounter with Senator Latvala. [Rogers II p. 95-99]

48. According to the testimony of Ms. Rogers, Senator Latvala “came into the Majority Leader’s Office. Senator Simpson was not there... It was clear that Senator Latvala was upset.” [Rogers II p. 97]

49. Ms. Rogers testified she “attempted to calm him down because that’s part of (her) job. It’s something [she does] with members all the time.” [Rogers II p. 98] After a few minutes, Senator Latvala said “I really appreciate your time... Thanks,” he got up to leave and, at that point, “he reached around and grabbed my love handle.” [Rogers II p. 99]

50. Senator Latvala denied ever hugging any woman in a manner that was intended to make them uncomfortable. [Latvala I p. 85]

51. Senator Latvala was asked about the alleged 2017 incident in Senator Simpson’s office when Senator Latvala was purportedly upset. Senator Latvala testified: “I do not recall a specific incident like that, but my previous answer to you is that I have not touched her inappropriately on any occasion.” [Latvala II p. 8]

Elevator 13

52. In her sworn complaint, Ms. Rogers states that Senator Latvala assaulted her in Elevator 13. [Ex. 1 ¶ 7] Ms. Rogers reaffirmed that an assault occurred in Elevator 13 during her sworn testimony on December 1, 2017. [Rogers II p. 6] By sworn affidavit, she subsequently has asserted this happened in the afternoon, on October 9, 2017. [Ex. E]

53. Elevator 13 is a limited access elevator in the Florida Capitol Building. Both Senator Latvala and Ms. Rogers have access to, and use, Elevator 13 [Latvala I p. 16-19; Rogers II p. 102; Ex. E; Ex. F p. 1-7]

54. Ms. Rogers originally testified the only time she uses Elevator 13 is “to go to or from the parking garage.” [Rogers II p. 10] Ms. Rogers first stated the alleged assault took place on Elevator 13 either on the morning of October 11, 2017, or on the 9th or 10th of October, 2017. [Rogers II p. 7] Ms. Rogers testified that on October 9, 10, or 11, when riding Elevator 13, her best recollection was that she was “either going to or coming from the parking garage.” [Rogers II p. 11] Later, Ms. Rogers recalled she used the elevator on October 9, 2017, in the afternoon, to return to her office after accompanying Senator Simpson to a committee meeting, and the encounter occurred at that time. [Ex. E]

55. The Florida Department of Law Enforcement (FDLE) maintains Event Summary Reports which show, by date and time, if an individual’s identification card has been used to access Elevator 13. [Ex. J]

56. It is not uncommon for two or three people to enter and use Elevator 13 but for only one person to use their identification card to gain access. [Rogers II p. 13] Event

visits to Elevator 13 confirm that the elevator ride time between floors can be measured in seconds.

63. At 9:19 a.m. on October 11, 2017, Ms. Rogers texted Senator Greg Steube about her frustration with the Capital. [Rogers II, Ex. 3] Ms. Rogers testified the incident with Senator Latvala on Elevator 13 occurred during the week of October 9, 2017, but before she sent the text message to Senator Steube. [Rogers II p. 8] Neither Ms. Rogers nor Senator Steube recalled further discussion between them concerning the October 11, 2017, text message. [Rogers II p. 123, 124; Rogers II, Ex. 3; Steube p. 12]

64. Senator Wilton Simpson's sworn testimony was taken on November 21, 2017. Senator Simpson testified he recalled that Ms. Rogers reported to him that Senator Latvala "had groped her or touched her" on an elevator during the first committee week in October. [Simpson p. 23-25] Senator Simpson could not recall when Ms. Rogers told him about the elevator incident. [Simpson p. 19] He thought "she probably mentioned" it to him sometime in October of 2017. [Simpson p. 25] Ms. Rogers' statement to Senator Simpson, close in time to the incident, is corroborative and rebuts an assertion of recent fabrication.

65. On November 29, 2017, and again on December 7, 2017, Senator Latvala testified he did not recall being on Elevator 13 with Ms. Rogers within the last 60 days. [Latvala I p. 29; Latvala II p. 16]

66. Senator Latvala's Capitol identification badge number is 60229. [Latvala I p. 16] Ms. Roger's Capitol identification badge number is 60409. [Rogers III p. 62]

67. On October 10, 2017, at 10:13:46, Card number 60229 (assigned to Jack Latvala) was scanned for use of Elevator 13. [Ex. J p. 23] Ninety-seven (97) seconds later, at 10:15:22, card number 60409 (assigned to Rachel Perrin Rogers) was scanned for use of Elevator 13. [Ex. J p. 25] This denotes the two possibly rode on Elevator 13 together on October 10, 2017, and could rebut Senator Latvala's statement that he did not ride with Ms. Rogers on Elevator 13 within the last 60 days. However, Ms. Rogers now believes the encounter took place on the afternoon of October 9, 2017. There is no other card reader data available for Elevator 13 for October 9, 2017, thru October 11, 2017, that puts Ms. Rogers and Senator Latvala on Elevator 13 at or near the same time. This is not dispositive. On any given day, numerous people ride Elevator 13 without swiping the elevator card reader, as noted in paragraph 56.

68. Ms. Rogers now states the incident on Elevator 13 happened on October 9, 2017, shortly after accompanying Senator Simpson to a 3:30 p.m. Education Committee

meeting. Ms. Rogers states she got on Elevator 13 on the second floor and rode to the third floor. [Ex. E p. 13, Rogers Aff. ¶ 13] It was during this ride that the alleged assault occurred.

69. In her affidavit, Ms. Rogers states:

Previously, when speaking with the Special Master, I could not immediately recall why I was on Elevator 13 or what time. Since my interview, I remember that I was heading back to my office on the third floor of the Senate office building after walking Senator Simpson to his committee meeting.

I walked Senator Simpson to his 3:30 p.m. Education Committee meeting.... While we were walking over, I sent an email at 3:17 p.m. to the Committee members with a graphic they could use after voting on a priority bill that day.

[Ex. E p. 2, Rogers Aff. ¶ 9, 11]

70. Senator Simpson is a member of the Florida Senate Committee on Education. On October 9, 2017, that committee met in room 412 of the Knott Building at the Capitol. Senator Simpson was in attendance when the meeting was called to Order at 3:30:24 p.m. [Ex. K; Ex. E p. 5-6]

71. Exhibit K shows that Senator Simpson is present in the Knott building Committee meeting room at least by 3:24:56 on October 9, 2017. Ms. Rogers does not appear on that video. [Ex. K]

72. On October 9, 2017, the Florida Senate Committee on Environmental Preservation and Conservation met at 1:00 p.m. in room 37, which is located in the lower level of the Senate Office Building. The meeting adjourned at or near 3:00 p.m. [Ex. L] Senator Latvala is a member of the Environmental Preservation and Conservation Committee and was present when the meeting began. [Ex. L; Ex. N] He is not visible at the time the meeting adjourned. [Ex. L]

73. On October 9, 2017, the Florida Senate Committee on Commerce and Tourism was called to order at 3:33:39 p.m. in room 110 of the Florida Senate Office Building. [Ex. M; Ex. E p. 7] Senator Latvala was in attendance. [Ex. E p. 7-8] He first

appears in video recording of that committee meeting at approximately 3:29:17 p.m. [Ex. M]

74. It is a finding of fact that Senator Latvala was at the Capitol but not in committee meetings at or near the time Ms. Rogers alleges she was assaulted by Senator Latvala in Elevator 13, on October 9, 2017. Event Summary Reports for October 9, 2017, between 3:00 p.m. and 3:30 p.m. do not show either Senator Latvala or Ms. Rogers using their identification cards on Elevator 13. [Ex. J]

75. Senator Latvala was between committee meetings at or near 3:00 p.m. until 3:29:17 p.m. on October 9, 2017. Nothing appeared on Senator Latvala's work calendar for that time. [Ex. N] The window of time for the assault to have occurred is approximately 10 minutes, that time being shortly after the 3:17 p.m. e-mail sent by Ms. Rogers but before Senator Latvala's 3:29 p.m. appearance at the Commerce and Tourism Committee meeting. No available evidence excludes this window of time as the time of an alleged assault on Elevator 13. Several witnesses whose card reader data indicated that they accessed Elevator 13 during this 10 minute window of time were interviewed. None recalled the incident. [Hanson, Swindle, Welborn, Delgadillo]

April 18, 2017

76. Ms. Rogers' sworn complaint describes an encounter on April 18, 2017, during which Senator Latvala groped a female lobbyist in her presence, in the Senate Majority Leader's Office. [Ex. A ¶ 8] Ms. Rogers testified that on this date, she and three lobbyists, _____, _____, and Teye Reeves, were in Senator Simpson's personal office at approximately 4:00-5:00 p.m. [Rogers II p. 125, 127]

77. Ms. Rogers testified that Senator Latvala came into the office and sat on a couch in Senator Simpson's office next to Ms. _____ [Rogers II p. 125] Senator Simpson was present for a short time but abruptly left after receiving a telephone call. [Rogers II p. 126] Ms. Rogers testified Senator Simpson asked her to keep everyone occupied until he could get back because he needed to meet with Senator Latvala. [Rogers II p. 126]

78. Ms. Rogers testified that she, Senator Latvala, Ms. _____ Ms. _____ and Ms. Reeves remained inside Senator Simpson's personal office for at least 40 minutes. [Rogers II p. 126] Ms. Rogers testified Senator Latvala appeared intoxicated when he arrived, although he did not smell of alcohol. [Rogers II p. 127, 129] Ms. Rogers testified Senator Latvala was drinking alcohol, specifically Grey Goose Vodka, in the room. Ms. Rogers testified that it was not uncommon for legislators, at certain times of

the day, particularly later in the afternoon, to have drinks in the office space. Alcohol is kept in the office suite. [Rogers II p. 128] Ms. Rogers may have poured a drink for Senator Latvala. She recalls pouring at least two drinks for women in the room. [Rogers II p. 129] Ms. Rogers testified she was not drinking on that occasion and was not intoxicated. [Rogers II p. 129]

79. Ms. Rogers testified Senator Latvala was sitting on the far end of the couch in Senator Simpson's personal office and Ms. [redacted] was sitting in the middle of the couch. [Rogers II p. 130] Ms. Rogers testified she saw Senator Latvala rubbing the side of Ms. [redacted] breast with his hand, and at one point, put his hand inside her clothing. [Rogers II p. 130] Observing this made her feel upset and angry. [Rogers II p. 130] Ms. Rogers testified Ms. [redacted] looked distressed by Senator Latvala's conduct and pushed his hand away several times. [Rogers II p. 133-134] Ms. Rogers did not say anything at the time and does not know if the others observed what she saw. [Rogers II p. 130-131] Ms. Rogers testified she did not discuss the incident with Ms. Reeves, Ms. [redacted] or Ms. [redacted]. [Rogers II p. 131] Ms. Rogers believes the first person she ever told about the incident was her attorney or a reporter from Politico. [Rogers II p. 131]

80. Ms. Rogers testified she has seen Senator Latvala touch other women in the past but was unable to tell whether these past events were consensual or not, in the way she could tell that it was not consensual when she saw Senator Latvala touch Ms. [redacted] on April 18, 2017. [Rogers II p. 134]

81. Teye Reeves' sworn statement was taken on November 28, 2017. Ms. Reeves recalled being in Senator Simpson's office with Senator Latvala, Ms. [redacted], Ms. [redacted], and Ms. Rogers, possibly in April, 2017. [Reeves p. 13] Ms. Reeves recalled Senator Simpson was present at some point. [Reeves p. 14-15] Senator Latvala arrived after her and sat on the couch. [Reeves p. 15] Ms. Reeves testified they remained in Senator Simpson's office for an hour to an hour and a half, that alcohol was served, and that she had what she best recalls as a vodka and soda while in the office. [Reeves p. 17, 19] Ms. Reeves had no opinion as to whether anyone in the room was intoxicated. [Reeves p. 19-20] Ms. Reeves did not recall her location within the room, but testified she was in a position to observe Senator Latvala and Ms. [redacted]. She did not observe any physical contact between anyone in the room. [Reeves p. 21-22] Ms. Reeves testified she did not see Senator Latvala touch Ms. [redacted] she has never seen him touch Ms. [redacted] and that Senator Latvala has never touched her. [Reeves p. 22]

82. [redacted]'s sworn statement was taken on November 29, 2017. Ms. [redacted] recalled the April 18, 2017, incident because that was Florida Keys Day. [redacted]

p. 15-16, 18] Ms. recalled they were in Senator Simpson's personal office between 4:00 p.m. and 4:30 p.m. for 30 minutes to an hour. [p. 17, 24] Ms. recalled she left Senator Simpson's office with Senator Latvala and Ms. to attend Florida Keys Day. [p. 19, 25; Exhibit O] Ms. did not recall drinking that day in the office [p. 17], and did not believe that Senator Latvala was intoxicated. [p. 21] Ms. did not recall Senator Latvala physically touching her or anyone else in the room. [p. 28-30. But see, Johnson p. 26-30 stating Ms. told Ms. Johnson that Senator Latvala touched her breast.] Ms. testified she has never seen Senator Latvala put his hand down Ms. blouse. [p. 38]

83. sworn testimony was taken on November 28, 2017. Ms. recalled being in Senator Simpson's personal office with Ms. , Ms. Reeves, Ms. Rogers and Senator Latvala during session in 2017. [p. 11-12] Ms. denies Senator Latvala touched her or anyone else during that encounter. [p. 20-21] Ms. testified that Senator Latvala has behaved respectfully toward her on every occasion. [p. 23]

84. Senator Latvala testified he recalled being in Senator Simpson's office in April 2017, with Ms. , Ms. Ms. Reeves, Ms. Rogers and Senator Simpson. [Latvala p. I 47-48] Senator Latvala testified he was present in the office for 5 or 10 minutes. [Latvala I p. 51] He has consumed alcohol inside the Capitol building at the end of a day on occasion [Latvala I p. 54], but initially denied ever drinking inside Senator Simpson's personal office. [Latvala I p. 55-57] Senator Latvala did not recall sitting on the couch and testified he only recalled standing. [Latvala I p. 56] Senator Latvala testified that while in the office space at the time discussed, "he could have hugged somebody when they came in, you know, the way I hug those girls when they come to my office, yes, I could have done that, but not what was described in the complaint." [Latvala I p. 58] Senator Latvala denied trying to touch anyone's breast on that occasion. [Latvala I p. 58] Senator Latvala's testimony that he was present for only 5 or 10 minutes is not consistent with the testimony of other witnesses present.

Evidence of Complainant's Past Interactions Concerning Respondent

85. Text messages between Senator Latvala and Ms. Rogers [Ex. P; Ex. Q; Rogers II, Ex. 1-2] suggest an amiable relationship between the two. Ms. Rogers messaged Senator Latvala in November of 2015, that she wanted to give him "a big hug," and also sent him two heart-shaped emojis. [Rogers III p. 37, 42, Ex. 1 p. 2, 12, Ex. 2 p. 9; Ex. P] She also gave him a \$100.00 campaign contribution on April 1, 2016. [Ex. R p.

4] Ms. Rogers testified it was common for her to give campaign contributions to candidates if she attended their campaign fundraising events. [Rogers III p. 25]

86. When asked about the “big hug” and emoji texts, and the campaign contribution, Ms. Rogers testified that because of her position in the Senate Majority Leader’s Office, it was important for her to maintain cordial relationships with all of the Senators. [Rogers I p. 21, Rogers II p. 90, 98] In addition, when discussing her decision to return to full time employment with the Senate in early December, 2015, Rogers testified:

From what I know about the years that I have spent around Senator Latvala, he views women in a few different ways. There are women who he helps and respects, but doesn’t bother—doesn’t bother in the way that he’s bothered other women, in the way that he’s touched or said things. I thought that if I sent this [text message referencing “a big hug”], I thought I could appeal to him emotionally, and then I would be safer when I came back. I thought that I could—and in an effort to do that, I also know that most of the time—all of the times that I have had problems with him, my hair has been blonde, or lighter, and so at this time, I dyed my hair dark before I went back to the Senate.

[Rogers III p. 34]

87. Senator Latvala’s attorneys provided text messages purportedly between Senate staffer Lillian Tysinger and Ms. Rogers. [Ex. S] The text messages were casual and friendly. [Ex. T; Rogers III, Ex. 3] According to his attorneys, “Senator Latvala’s position” is that some of these text messages between Ms. Rogers and Ms. Tysinger suggest that Ms. Rogers had a “risqué” or “desirous” dream about Senator Latvala, and that Ms. Rogers’ believed working for Senator Latvala would be a positive experience for Ms. Tysinger. [Ex. S p. 2, 3]

88. Ms. Rogers testified she did not recognize the text messages purportedly between herself and Ms. Tysinger, and was certain she did not send them. [Rogers III p. 55-60, Ex. 3] Statements by Ms. Tysinger, as well as forensic evidence submitted by Senator Latvala’s counsel, contradict Ms. Rogers’ testimony that she did not send the messages. [Ex. U] The Special Master finds this contradiction to be troublesome but not dispositive to a probable cause determination.

89. Ms. Charla Jan Gainer, the wife of Florida State Senator George Gainer, voluntarily appeared and testified before the Special Master on November 29, 2017. She

testified she had lunch with Ms. Rogers on October 12, 2017, at the Governors Club in Tallahassee, which would have been after, but during the same week as, the purported Elevator 13 incident. Mr. Gainer testified that while seated at lunch with Ms. Rogers, “Senator Latvala came by.” [Ex. I-1, J. Gainer p. 16]¹ After a brief exchange of pleasantries, Senator Latvala walked up the stairs to the dining room. Ms. Gainer testified Ms. Rogers spontaneously said “he was going to make a great Governor.” Ms. Gainer testified Ms. Rogers said this with a “smile on her face, with all sincerity in her voice.” [Ex. I-1, J. Gainer p. 21; See also, Ex. V, Declaration of Brad Drake]

90. Ms. Rogers also testified about the October 12, 2017, lunch with Ms. Gainer. Ms. Rogers confirmed they had lunch on that day at the Governors Club. [Rogers III 14-16, Ex. 6] She also confirmed that they briefly interacted with Senator Latvala in the Governors Club dining room. Ms. Rogers denied saying Senator Latvala would be a great Governor (or words to that effect) after he left their table. [Rogers III p. 67] Ms. Rogers also testified that later, when she and Ms. Gainer left the Club and saw Senator Latvala outside, (Rogers) took off. [Rogers III p. 23] Ms. Rogers said: “I physically got away as fast as I could because, at this point, after everything that had gone on, I had reached a breaking point, which led to all of this, but I walked off, and [Ms. Gainer] had to run, and she caught up with me about a block-and-a-half later.” [Rogers III p. 23] The Special Master finds that different perceptions of a luncheon dialogue between two individuals is not uncommon, and is not determinative as to the credibility of either person’s testimony regarding what occurred.

Similar Fact Evidence

Senator Latvala provided the Special Master with numerous sworn statements attesting to his good character. Other alleged acts, or similar fact evidence, is not the focus of the Special Master’s inquiry. However, in view of Senator Latvala’s submission of witness statements attesting to his good character, positive behavior toward women, and statements which tend to impeach the credibility of Ms. Rogers, similar facts to those as alleged in the sworn complaint have been considered.

91. Counsel for Senator Latvala provided the Special Master with numerous sworn statements from individuals who knew and had worked with the Senator. All were supportive and characterized Senator Latvala as passionate about his work on behalf of the people of the State of Florida. These witnesses assert they never observed Senator

¹ Ms. Gainer knows Senator Latvala. Her husband, Florida Senator George Gainer, and Senator Latvala have contributed to each other’s political campaigns. [Composite Ex. I-2, G. Gainer p. 22, 23]

Latvala act in an inappropriate manner towards themselves or other women, and that such conduct would be inconsistent with Senator Latvala's character. [Ex. I-1, G. Gainer p. 4-9, 19-20; Ex. I-3, A. Gainey p. 4-6; Ex. I-4, K. Roger p. 4; Ex. I-5, Aldikacti p. 10, 13-15; Ex. I-6, Audie p. 7-9; Ex. I-7, Basham p. 5-10; Ex. I-8, Collins p. 10-12; Ex. I-9, Dudley p. 5-9; Ex. I-10, Duncanson p. 6-8; Ex. I-11, Henning p. 7-9; Ex. I-12, Mortham p. 5; Ex. I-13, Padgett p. 8-10; Ex. I-14, Powers p. 5-6; Ex. I-15, Rodin p. 6-7; Ex. I-16, Stewart; Ex. I-17, Stiff p. 5, 8; Ex. I-18, Timmins p. 4-14; Ex. I-19, Wilson p. 5-9]

92. Lobbyist Carol Duncanson testified, in a sworn affidavit provided by counsel for Senator Latvala, that she was friends with Senator Latvala, had known him for a long time, and that he is "one of the most loyal people that (she had) known in (her) 35 years in the Capital." The following was included in her testimony:

Question: Has...has he ever made any inappropriate advances towards you?

Answer: No. I mean, he's joked around with me, and I may have responded flippantly because I never took anything he said as anything other than a joke, but absolutely not, no.

He is outgoing. He is friendly. You know, I called him huggy and touchy-feely in terms of hug and touch and what, but I—I—I don't know that that's inappropriate, or that there is anything criminal or wrong with that....

[Ex. I-10, Duncanson p. 7, 10]

93. provided sworn testimony to the Special Master on December 6, 2017. Ms. , a lobbyist who has worked with Senator Latvala, testified that in the past, Senator Latvala made comments which made her feel uncomfortable, and touched her waist in an unwelcome manner on three or four occasions. [p. 23, 25-26, 31-32]. Another lobbyist voluntarily provided an affidavit stating that two fellow lobbyists warned her that Senator Latvala would "be all over her" and she should "try not to be alone with him." [Ex. W, Moran Aff. See also, Johnson p. 30-32]

94. David Ramba (see paragraph 29), testified that Senator Latvala often makes grunting or growling sounds. [Ramba p. 12] Another witness said that Senator Latvala directs such sounds toward women. [p. 56]

95. [redacted] is a Florida Senate employee who, prior to her recent employment in the Office of [redacted], worked as a lobbyist. [redacted] p. 10] She has known Senator Latvala since around 1995. [redacted] p. 14] For a number of years, Ms. [redacted] had a close personal relationship with Senator Latvala that was, at times, intimate. Ms. [redacted] testified that when Senator Latvala became engaged to his current wife, she thought the sexual nature of her relationship with Senator Latvala would stop. [redacted] p. 53] It did not. [redacted] p. 23, 35, 55]

96. Ms. [redacted] testified that between 2015 and 2017, Senator Latvala touched and groped her in an unwelcome manner every time she went to his office, and that she believed tolerating such behavior was part of her job as a lobbyist. [redacted] p. 37, 41] If she went to his office in the Capitol and the door closed, she “pretty much [was] always touched.” [redacted] p. 36] Ms. [redacted] stated that Senator Latvala placed his hands up her dress, touched the outside of her underwear at her vaginal area, her buttocks, and her breast. [redacted] p. 36]

She also recounted that a number of times he “would be very huggy” with her on elevators in the Senate Office Building. [redacted] p. 39-40; 65] She testified:

Question: When you said on the elevator he was “huggy,” describe what you mean.

Answer: He puts his - - he hugs you very tight and he gets his hands close to places you wouldn’t want him to and...”

Question: Like your breast?

Answer: Yes.

[redacted] p. 65] Ms. [redacted] confirmed that Senator Latvala would place his hands on a woman’s waist and move his hand up and down the side of her body. [redacted] p. 65] This testimony corroborates Ms. Rogers account of the Elevator 13 incident as well as her description of Senator Latvala touching her midsection on four occasions during the 2016-2017 Legislative Sessions.

97. Ms. [redacted] further testified that Senator Latvala expressly intimated to her on multiple occasions, that if she engaged in sexual acts or allowed him to touch her body in a sexual manner he would support particular legislative items for which she was lobbying. [redacted] p. 27, 29, 33-34, 37, 41-42] This testimony is supported by explicit text messages purportedly sent from Senator Latvala to Ms. [redacted]. [Ex. X] Ms. [redacted] tolerated the recent unwanted touching in Senator Latvala’s office between 2015

and 2017. [p. 42] Ms. testified: “I felt it was something he felt entitled to.” [p. 42]

98. The most recent text message purportedly from Senator Latvala concerning possible support for legislation in exchange for a sexual encounter was sent in February of 2016. [Ex. X]

99. Ms. testified she finally left her work as a lobbyist “[i]n large part so [she] would never have to owe [Senator Latvala] anything.” [p. 66]

100. Ms. has met Ms. Rogers but does not know her well. [p. 11-12] Ms.’s testimony is corroborative of allegations contained in Ms. Rogers’ sworn complaint.

101. Ms.’s testimony raises issues of public corruption and ethics violations not within the scope of this report.

ANALYSIS OF SENATE RULE 1.35

The Special Master is tasked with determining whether probable cause exists to believe that Senator Latvala violated Senate Rule 1.35 governing legislative behavior. Rule 1.35 states “[e]very Senator shall conduct himself or herself to justify the confidence placed in him or her by the people and, by personal example and admonition to colleagues, shall maintain the integrity and responsibility of his or her office.” At issue is the application of Senate Rule 1.35 to the allegations in the sworn complaint.

Article III, sections 2 and 4(a) of the Florida Constitution give the Florida State Senate the power to determine and interpret its own rules of procedure. Borrowing from rules of statutory construction, the plain meaning of Rule 1.35 was considered, because “when language is unambiguous and conveys a clear meaning, it must be given its plain and obvious meaning.” *See e.g., Smith v. Smith*, 224 So. 3d 740, 745 (Fla. 2017). However, the meaning of Rule 1.35 is not plain or self-evident. The language of Rule 1.35 points to a community standard, set by the Florida State Senate, in determining what conduct justifies or fails to justify the confidence placed in a Senator by the people, and what conduct by a Senator fails to maintain the integrity and responsibility of his or her office.

Thus, in order to interpret Rule 1.35, the Special Master considered, as instructive, language of the Florida Constitution, Florida statutory law, and other Senate Rules, including Administrative Rule 1.49.

The Florida Constitution makes clear that a “public office is a public trust,” and that “the people shall have the right to secure and sustain that trust against abuse.” Article II Section 8. Pursuant to the Oath of Office, set forth in Article II Section 5(b) of the Florida Constitution, every public official for the State of Florida swears or affirms that he or she “will support, protect, and defend the Constitution and Government of the United States and of the State of Florida . . . and will well and faithfully perform the duties” of his or her office.

Florida Statute § 112.313(6), outlining the standards of conduct for public officials and the prohibition against misuse of public position, states: “No public officer . . . shall corruptly² use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.” Sexual harassment and attempts to obtain sexual favors from subordinates fall within the ambit of misuse of public position. *See generally, Garner v. Florida Comm'n on Ethics*, 415 So. 2d 67, 68 (Fla. 1st DCA 1982).

Florida Senate Administrative Policies and Procedures, Rule 1.49, entitled “Workplace Harassment Prohibited,” is also instructive, though not determinative, in interpreting Senate Rule 1.35 as applied to conduct alleged in the sworn complaint. Administrative Rule 1.49 states:

It is the policy of the Senate that harassment toward any employee based on race, color, religion, sex, national origin, age, disability, or marital status will not be tolerated. Because of the Senate's strong disapproval of unlawful harassment related to their employment, all Senators and employees must avoid conduct that could be seen as prohibited harassment.

Prohibited harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that

² ‘Corruptly’ means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties. See Fla. Stat. § 112.312 (2014).

person's race, color, religion, sex, national origin, age, disability, or marital status. Harassment can also occur if conduct for these reasons is directed toward a person's relatives, friends, or associates. Prohibited harassment does one or more of the following:

- (1) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment.
- (2) Has the purpose or effect of unreasonably interfering with an individual's work performance.
- (3) Otherwise adversely affects an individual's employment opportunities.

Examples of prohibited harassment include:

- (1) Unwanted jokes or slurs with a sexual, racial, religious, ethnic, or similar content.
- (2) Display or distribution of sexually explicit pictures, posters, or writings.
- (3) Preferential treatment in return for sexual favors.
- (4) Unwelcome remarks about a person's sexual anatomy, sexual capabilities, ethnic characteristics, or physical disabilities.
- (5) Unwanted physical contact (e.g., kissing, hugging, pinching, patting, and caressing).
- (6) Hazing based on race, color, religion, sex, national origin, age, disability, or marital status.
- (7) Unwanted requests for dates or similar advances.
- (8) Derogatory comments about a person's choice of religion or religious beliefs.

Administrative Rule 1.49 specifically states that because of “the Senate’s strong disapproval of unlawful harassment” related to employment, “all Senators and employees must avoid conduct that *could be seen* as prohibited harassment.” (Emphasis added.) This expressly denotes the Senate’s strong disapproval of sexual harassment in the work place, and indicates that Rule 1.49 prohibits conduct that is less than actual, prohibited sexual harassment, and includes any conduct that may be perceived by others as being prohibited sexual harassment. Pursuant to Rule 1.49, verbal or physical conduct is considered prohibited sexual harassment if it has the purpose or effect of creating an

intimidating, hostile or offensive work environment. Examples of prohibited sexual harassment may include unwelcome remarks and unwanted physical contact.³

Under the plain language of Administrative Rule 1.49, a Senator's intent or purpose is not determinative. The rule prohibits conduct which simply has the effect of creating an intimidating, hostile, or offensive work environment, or workplace perceived by others as such. Black's Law Dictionary defines "effect" as "[s]omething produced by an agent or cause; a result, outcome, or consequence." Black's Law Dictionary (10th ed. 2014).

The use of the terms "unwelcome" or "unwanted" in the example of prohibited conduct, also suggests that the effect of the conduct on the recipient is the determining factor in whether specific conduct can amount to prohibited harassment. In the Title VII hostile work environment context, courts have generally defined "unwelcome conduct" as conduct an employee did not solicit or incite, and which the employee regarded as undesirable or offensive.⁴ However, the Special Master finds that the relative positions of authority between the individuals involved must be carefully considered when analyzing the appropriateness of Senator Latvala's alleged conduct or the significance of Ms. Rogers' alleged response to it.

Although federal Title VII hostile work environment case law and Equal Employment Opportunity Commission (EEOC) guidelines are instructive, the Special Master was not tasked with determining whether the alleged conduct is actionable under Title VII or any other statutory scheme. Administrative Rule 1.49 appears to prohibit more than legally actionable hostile work environment sexual harassment. Moreover, Senate Rule 1.35 is much broader than Administrative Rule 1.49, and prohibits any conduct which fails to maintain the integrity or responsibility of the office of the Florida Senate.

³ The phrase "purpose or effect of creating an intimidating, hostile or offensive work environment" tracks language used in both the Equal Employment Opportunity Commission guidelines on sexual harassment the Florida Administrative Code. (See 29 C.F.R. § 1604.11; Rule 60L-40.001, Fla. Admin. Code.)

⁴ See *Henson v. City of Dundee*, 682 F.2d 897, 903 (11th Cir. 1982); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 68 (1986); 29 C.F.R. § 1604.11, Guidelines on Discrimination Based on Sex.

PROBABLE CAUSE STANDARD

Probable cause exists if, based on the totality of circumstances, cautious persons have a reasonable basis to believe that a violation occurred. Probable cause requires more than mere suspicion. Probable cause requires a fair probability and depends on the totality of the circumstances. *See generally, Johnson v. State*, 660 So. 2d 648, 654 (Fla.1995); *State v. Griffin*, 949 So. 2d 309, 313 (Fla. 1st DCA 2007); *Fish v. Dep't of Health, Bd. of Dentistry*, 825 So. 2d 421, 423 (Fla. 4th DCA 2002); *Kasha v. Dep't of Legislative Affairs*, 375 So. 2d 43, 44 (Fla 3d DCA 1979); *Dahl v. Holley*, 312 F.3d 1228, 1234 (11th Cir. 2002).

PROBABLE CAUSE DETERMINATION

The sworn complaint alleges multiple instances of comments or behavior by Senator Latvala in violation of Rule 1.35. For the purpose of this probable cause determination, the Special Master concludes that behavior, verbal statements and physical touching which have “the effect” of creating an intimidating, hostile, or offensive work environment violate Florida Senate Rule 1.35. Ultimately, Senator Latvala is an elected Florida State Senator and his personal and professional conduct must be measured by the admonition of all Florida State Senators, as contemplated by Florida Senate Rule 1.35.

The Special Master finds that, concerning incidents alleged in the sworn complaint asserting that Senator Latvala directed conduct towards Complainant, there is probable cause to believe the events occurred and that based on the totality of the circumstances, they violated Rule 1.35. The evidence demonstrated a progression in conduct, over time, from unwelcome comments and nonverbal behavior to unwelcome touching.

The Special Master’s probable cause findings are as follows:

1. There is probable cause to believe that during the 2013 - 2014 Legislative sessions, Senator Latvala engaged in inappropriate and unwanted verbal and non-verbal behavior towards Ms. Rogers in violation of Senate Rule 1.35.
2. There is probable cause to believe that on or about February 17, 2015, at the Governors Club, Tallahassee, Florida, Senator Latvala had inappropriate physical contact with Ms. Rogers in violation of Senate Rule 1.35.
3. There is probable cause to believe that during the 2016 and 2017 legislative sessions, Senator Jack Latvala had inappropriate and unwanted physical

contact with Ms. Rogers on four delineated occasions, in violation of Senate Rule 1.35.

4. There is probable cause to believe that during the week of October 9, 2017, on Elevator 13 in the Florida State Capitol Building, Senator Latvala had inappropriate and unwanted physical contact with Ms. Rogers in violation of Senate Rule 1.35.
5. The sworn complaint specifically alleges, in paragraph 8 that on Tuesday, April 18, 2017, the Complainant observed Senator Latvala place his hands inside the blouse of a female lobbyist against her permission. Although Senator Latvala testified he may have hugged the lobbyist during that encounter, [Latvala I p. 58], the weight of evidence does not support a probable cause finding that he touched a lobbyist's breast without permission. The female lobbyist purportedly touched by Senator Latvala denied she had been touched. Accordingly, there is not probable cause to believe that Senator Latvala's behavior on the April 18, 2017, date, as alleged in the Complaint, violated Senate Rule 1.35.

RECOMMENDATIONS

Pursuant to his tasking, and as prescribed in Senate Rule 1.43(1)(b), the Special Master makes the following advisory recommendations:

1. **Sanctions:** The Special Master recommends that, based on the probable cause determination outlined above and pursuant to the procedure outlined in Senate Rule 1.43(1)(b) and (2), the Senate sanction Senator Latvala for conduct in violation of Senate Rule 1.35. The full range of available sanctions should be considered.
2. **Training:** The Special Master recommends increased and routine sexual harassment training for all Senators and staff. This should include enhanced training on what an elected official must do if a staff member reports sexual harassment by another elected official, staff member or third-party.
3. **Culture:** Based on the totality of evidence, the Special Master recommends an internal review of Senate culture. Interaction between Senators, Senate staff and third-party lobbyists, both inside the Capitol and during off-site events and work-

related social encounters, should be examined. This may lead to the development of additional guidelines or policy.

4. **Referral:** The allegations of quid pro quo conduct (physical contact or sexual intimacy in exchange for support of legislative initiatives) made by a witness other than Complainant, and seemingly confirmed in text messages from Respondent, appear to violate ethics rules, and may violate laws prohibiting public corruption.⁵ The Special Master recommends these allegations be immediately referred to law enforcement for further investigation. An internal investigation pursuant to Senate Rules, referral to the Florida Commission on Ethics, and/or some other appropriate mechanism of investigation of the alleged ethics violations is also recommended.

⁵ See e.g., Florida Statute §§ 838.015-16, 112.313(6). See also, Senate Rule 1.36.

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INDEX TO EXHIBITS

Exhibit

- A. November 5, 2017 Sworn Complaint
- B. Special Master's November 19, 2017 letter to Respondent
- C. Confidentiality Agreements
- D. Special Masters December 6, 2017 letter to Respondent
- E. Affidavit of Rachel Rogers dated December 12, 2017 with related documentation
- F. Composite site inspection photographs
- G. Excerpts of Personnel file of Rachel P. Rogers
- H. Affidavit of David Ramba dated December 5, 2017
- I. Sworn Statements (Composite)
 - 1. Sworn Statement of Jan Gainer taken on November 24, 2017
 - 2. Sworn Statement of George Gainer taken on November 24, 2017
 - 3. Sworn Statement of Andrea Gainey taken on November 24, 2017
 - 4. Sworn Statement of Kim Rogers taken on November 24, 2017
 - 5. Sworn Statement of Drew Cotter Aldikacti taken on November 7, 2017
 - 6. Sworn Statement of Charlotte Audie taken on November 27, 2017
 - 7. Sworn Statement of Bonnie Basham taken on November 8, 2017
 - 8. Sworn Statement of Carlecia Collins taken on November 8, 2017
 - 9. Sworn Statement of Alison Dudley taken on November 6, 2017
 - 10. Sworn Statement of Carole Duncanson taken on November 6, 2017
 - 11. Sworn Statement of Lisa Henning taken on November 6, 2017
 - 12. Sworn Statement of Sandra Mortham taken on November 8, 2017
 - 13. Sworn Statement of Diana Padgett taken on November 7, 2017
 - 14. Sworn Statement of Susan Powers taken on November 6, 2017
 - 15. Sworn Statement of Wendy Bitner Rodin taken on November 6, 2017
 - 16. Sworn Statement of Nancy Stewart dated November 10, 2017
 - 17. Sworn Statement of Keily Stiff taken on November 6, 2017
 - 18. Sworn Statement of Missy Timmins taken on November 7, 2017
 - 19. Sworn Statement of Jennifer Wilson taken on November 6, 2017
- J. FDLE Event Summary Reports (composite)
- K. Committee on Education meeting printout & video from October 9, 2017 meeting
- L. Committee on Environmental Preservation & Conservation meeting printout & video from October 9, 2017 meeting
- M. Committee on Commerce and Tourism meeting printout & video from October 9, 2017 meeting

- N. Senator Latvala's calendar for October 9 -11, 2017 with Certificate of Authenticity
- O. 2017 Event Calendar
- P. Text messages between Senator Latvala and Ms. Rogers with annotations
- Q. Affidavit and report of John Sawicki dated November 29, 2017
- R. Campaign Contributions for Senator Latvala, 2016 General Election
- S. Text messages between Lillian Tysinger and Ms. Rogers dated June 15, 2017 with annotations
- T. Affidavit of Lillian Tysinger dated November 30, 2017
- U. Affidavit and report of John Sawicki dated December 4, 2017
- V. Declaration of Brad Drake dated December 4, 2017
- W. Affidavit of Marianne Moran dated December 13, 2017
- X. Excerpts of text messages from

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2.	Charla Jan Gainer	November 29, 2017
3.		November 28, 2017
4.	Brian Hughes	December 1, 2017
5.	Camille Johnson	November 21, 2017
6.	Senator Jack Latvala (Volume I)	November 29, 2017
7.	Senator Jack Latvala (Volume II)	December 7, 2017
8.	Kelly Mallette	December 7, 2017
9.		December 7, 2017
10.	Caitlin Murray	November 30, 2017
11.	David Ramba	December 6, 2017
12.	Teye Reeves	November 28, 2017
13.	Rachel Perrin Rogers (Volume I)	November 17, 2017
14.	Rachel Perrin Rogers (Volume II)	November 17, 2017
15.	Rachel Perrin Rogers (Volume III)	December 1, 2017
16.	Senator Wilton Simpson	November 21, 2017
17.	Senator Gregory Steube	November 28, 2017
18.		November 29, 2017

Additional testimony taken on December 18, 2017

19.	Guadalupe Delgadillo
20.	Dawn Hanson
21.	Lindsey Swindle
22.	Kelly Welborn

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1. Senator Latvala's work calendar and parking garage photographs transmitted on December 1, 2017
2. Text message between Ms. Rogers and Mary Ellen Klas
3. Documentation relating to Rogers' pay increases
4. Documentation relating to Lillian Tysinger's pay increases and transfer
5. Affidavit of Scott Ross dated December 5, 2017
6. Written questions answered by Ronald Whitaker re. Tysinger
7. Written questions answered by Cheryl Vancura re. Tysinger
8. Affidavit of Camille Johnson dated December 14, 2017
9. Personnel file of Rachel Perrin Rogers
10. Affidavit of Lillian Tysinger dated December 4, 2017
11. Affidavit of John Sawicki and certificate of authenticity pertaining to Senator Latvala's phone with copies of text messages transmitted on December 5, 2017
12. Political Connections 11/19/17 media interview transcripts
13. Declarations from re. Elevator 13
14. Text messages between Ms. Rogers and Lillian Tysinger starting July 20, 2017 transmitted by Steven Andrews on December 5, 2017
15. Sworn statement of Susie Shin and photographs transmitted December 7, 2017
16. Index of submissions and Latvala's summary submitted on December 7, 2017
17. December 1, 2017 email from Tiffany Cruz with attached emails
18. Text messages between _____ and Senator Latvala
19. Diary entries made by _____