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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 22-9485

The Board of the Office of Congressional Ethics (hereafter “the Board”), by a vote of no less than four members, on August 26, 2022, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives (hereafter “the Committee”).

SUBJECT: Representative Kaiali’i Kahele

NATURE OF THE ALLEGED VIOLATION: Rep. Kahele’s campaign social media accounts may have posted videos and photos that were photographed or filmed from official House buildings, rooms, and offices, used official graphics and social media posts, shared official communications, or promoted official events. If Rep. Kahele misused official resources for campaign or political purposes or used campaign funds to defray official expenses, then he may have violated House rules, standards of conduct, and federal law.

Rep. Kahele may have taken official action on issues related to his employer that may affect his financial interests or dispensed special favors or privileges to this same entity. If Rep. Kahele took official action that was motivated by, or that reasonable persons might view as motivated by his financial interest, or if Rep. Kahele dispensed special favors or privileges, then he may have violated House rules and standards of conduct.

RECOMMENDATION: The Board recommends that the Committee further review the above allegation concerning Rep. Kahele because there is substantial reason to believe that Rep. Kahele’s campaign social media accounts may have posted videos and photos that were photographed or filmed from official House buildings, rooms, and offices, used official graphics and social media posts, shared official communications, or promoted official events.

The Board recommends that the Committee dismiss the above allegation concerning Rep. Kahele because there is not substantial reason to believe that Rep. Kahele may have taken official action on issues related to his employer that may affect his financial interests or dispensed special favors or privileges to this same entity.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE: Omar S. Ashmawy, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 22-9485

On August 26, 2022, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (*in italics*). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. Rep. Kahele’s campaign social media accounts may have posted videos and photos that were photographed or filmed from official House buildings, rooms, and offices, used official graphics and social media posts, shared official communications, or promoted official events. If Rep. Kahele misused official resources for campaign or political purposes or used campaign funds to defray official expenses, then he may have violated House rules, standards of conduct, and federal law.
2. Rep. Kahele may have taken official action on issues related to his employer that may have affected his financial interests or dispensed special favors or privileges to this same entity. If Rep. Kahele took official action that was motivated by, or that reasonable persons might view as motivated by his financial interest, or if Rep. Kahele dispensed special favors or privileges, then he may have violated House rules and standards of conduct.
3. The Board recommends that the Committee on Ethics of the United States House of Representatives (“Committee”) further review the above allegation concerning Rep. Kahele because there is substantial reason to believe that Rep. Kahele misused official resources for campaign or political purposes or used campaign funds to defray official expenses.
4. The Board recommends that the Committee on Ethics of the United States House of Representatives (“Committee”) dismiss the above allegation concerning Rep. Kahele because there is not substantial reason to believe that Rep. Kahele may have taken official action on issues related to his employer that may affect his financial interests or dispensed special favors or privileges to this same entity.

B. Jurisdictional Statement

5. The allegations that were the subject of this review concern Rep. Kahele, a Member of the United States House of Representatives from the 2nd District of Hawaii. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken ... by the [B]oard of any alleged

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violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

6. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on May 20, 2022. The preliminary review commenced on May 21, 2022.²
7. On May 23, 2022, the OCE notified Rep. Kahele of the initiation of the preliminary review, provided him with a statement of the nature of the review, notified him of his right to be represented by counsel in this matter, and notified him that invoking his right to counsel would not be held negatively against him.³
8. At least three members of the Board voted to initiate a second-phase review in this matter on June 18, 2022. The second-phase review commenced on June 20, 2022.⁴ The second-phase review was scheduled to end on August 3, 2022.
9. On June 21, 2022, the OCE notified Rep. Kahele of the initiation of the second-phase review in this matter, and again notified him of his right to be represented by counsel in this matter, and that invoking that right would not be held negatively against him.⁵
10. The Board voted to extend the second-phase review by an additional period of fourteen days on July 29, 2022. The additional period ended on August 17, 2022.
11. The Board voted to refer the matter to the Committee for further review and dismissal and adopted these findings on August 26, 2022.
12. The report and its findings in this matter were transmitted to the Committee on August 30, 2022.

D. Summary of Investigative Activity

13. The OCE requested documentary and in some cases testimonial information from the following sources:

- 1) Rep. Kahele;

¹ H. Res. 895 of the 110th Congress § 1(e) (2008) (as amended) (hereafter the “Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to the Resolution, the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

³ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Kahele (May 23, 2022).

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second phase, the second phase commences the day after the preliminary review ends.

⁵ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Kahele (June 21, 2022).

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- 2) The Air Line Pilots Association;
- 3) Hawaiian Airlines;
- 4) Witness 2, Rep. Kahele's Legislative Director; and
- 5) Witness 3, Rep. Kahele's Chief of Staff.

The following individuals and entities refused to fully cooperate with the OCE's review:

Rep. Kahele.

II. REP. KAHELE MAY HAVE MISUSED OFFICIAL RESOURCES FOR CAMPAIGN OR POLITICAL PURPOSES OR USED CAMPAIGN FUNDS TO DEFRAY OFFICIAL EXPENSES

A. Applicable Law, Rules, and Standards of Conduct

14. Federal Statutes

2 U.S.C. § 503(d) provides that "[n]o Senator or Member of the House of Representatives may maintain or use, directly or indirectly, an unofficial office account or defray official expenses for franked mail, employee salaries, office space, furniture, or equipment and any associated information technology services (excluding handheld communications devices) from—(1) funds received from a political committee or derived from a contribution or expenditure"

18 U.S.C. § 713(d) states that anyone who is not otherwise "directed by the United States House of Representatives, or the Clerk of the House of Representatives on its behalf,[and] knowingly uses, manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seal of the United States House of Representatives, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both."

Under 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

15. House Rules

House Rule 5, Clause 2(c)(1) states that "audio and video recordings of any coverage under this clause [Broadcasting the House] may not be used for any partisan political campaign purpose or be made available for such use."

House Rule 11, Clause 4(b) provides that "the intent of [the audio and visual coverage of committee proceedings clause is] that audio and video recordings of any coverage . . . may not be used for any partisan political campaign purpose or be made available for such use." Further, Clause 4(d) requires that "[t]he coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause."

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House Rule 24, clause 1(a) provides that “a Member . . . may not maintain, or have maintained for the use of such individual, an unofficial office account.”

House Rule 24, Clause 1(b)(2) prohibits the use of unofficial funds “to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).”

16. House Ethics Manual and Committee Guidance

*According to the House Ethics Manual “official resources of the House must, as a general rule, be used for the performance of official business of the House, and hence those resources may **not** be used for campaign or political purposes.”⁶*

The House Ethics Manual provides that “a Member or employee must take reasonable steps to ensure that any outside organization over which he or she exercises control . . . operates in compliance with applicable law.”⁷

a. Prohibition on Using Congressional Property for Campaign Activity

The House Ethics Manual states that “House buildings, and House rooms and offices – including district offices – are supported with official funds and hence are considered official resources. Accordingly, as a general rule, they may not be used for the conduct of campaign or political activities. Thus, for example, a Member may not film a campaign commercial or have campaign photos taken in a congressional office.”⁸

In a 2020 Pink Sheet concerning campaign-related media appearances on Congressional grounds, the Committee reiterates that “generally, campaign-related activity may not be conducted using any official resources, including the use of House staff on official time and on congressional grounds. Congressional grounds include all House and Senate office buildings, the Capitol, the grounds around the Capitol, and district offices. Spaces such as the Cannon Rotunda, Statuary Hall, and Members’ offices are on congressional grounds.”⁹

The House Ethics Manual explains that “[t]he House Office Building Commission, comprised of the Speaker, the Majority Leader, and the Minority Leader, has issued regulations governing the use of House facilities. These regulations generally ban solicitation and commercial activity, limit photography, restrict use of meeting rooms to congressionally related purposes.”¹⁰

⁶ Committee on Standards and Official Conduct, HOUSE ETHICS MANUAL 123 (2008), https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf [hereinafter “HOUSE ETHICS MANUAL”] (emphasis in original).

⁷ *Id.* at 122-123.

⁸ *Id.* at 127.

⁹ Committee on Ethics, *Memorandum for All Members, Officers, and Employees on Campaign-Related Media Appearances on Congressional Grounds* (March 10, 2020), at 1 [hereinafter “2020 Pink Sheet”].

¹⁰ HOUSE ETHICS MANUAL at 325.

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*To illustrate the point, the House Ethics Manual provides the following example: “Member D is planning to film a campaign commercial. D may **not** film in her congressional office because that would be using an official resource for a campaign purpose. She may film her commercial outside the Capitol in the areas designated by the Sergeant-at-Arms as part of the public space.”¹¹*

The House Ethics Manual permits the Member to designate “a number of activities . . . [as] either “official” or “political” at . . . [their] option.”¹² As soon as the Member determines whether an activity is considered official or unofficial the House Ethics Manual is clear “he is bound by it. A single event cannot, for purposes of the House rules, be treated as both political and official.”¹³ Further, “[o]nce the Member makes his determination [on whether an activity is to be official or political], he is bound by it. A single event cannot, for purposes of the House rules, be treated as both political and official.”¹⁴

A 2018 Committee Pink Sheet informs Members that they “may not conduct campaign activities in official buildings or use official resources. This restriction applies to campaign activity at all levels and is not limited to fundraising activities”¹⁵

b. Members are Prohibited from Using Official Photographs, Social Media Posts, and Press Releases for Campaign Purposes

Photographs that are categorized as official “must comply with applicable rules and regulations for official use and may not be used for personal or campaign purposes.”¹⁶ Official photographs may be used for such purposes only after said photo has been retired from service or its’ use has been exhausted.¹⁷

In the 2018 Pink Sheet, the Committee describes when official photographs and social media posts have exhausted their official use thereby rendering their posting, sharing, liking, retweeting etc. permissible.¹⁸ Official photographs are “exhaust[ed] [of their] official use when the congressional office is no longer using it for any purpose, and it comes down from any site where it may have been posted, including the official website and official social/new media

¹¹ *Id.* (emphasis in original).

¹² *Id.* at 179.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Committee on Ethics, Memorandum for All Members, Officers, and Employees on Campaign Activity Guidance (June 7, 2018), at 2 [hereinafter “2018 Pink Sheet”].

¹⁶ Committee on House Administration, 117TH CONGRESS MEMBERS’ CONGRESSIONAL HANDBOOK at 22 [hereinafter “CONGRESSIONAL HANDBOOK”].

¹⁷ *Id.* (A photograph’s “retirement” commences “one week after payment [cost of which is calculated by the House Photography Studio] is received by the House from the Member and all official resources (e.g. documents, websites, social media, etc.) have discontinued use of the image(s).” Members may use personal funds to procure the retirement of an official photo “[a] Member may not use MRA funds to purchase 1) photos that have been retired from official use, 2) photos from a Member’s campaign, or 3) photos from a political organization.” Members are, however, permitted to “use MRA funds to purchase photographs that are official in nature, at the established market rate, from outside organizations such as media outlets.”). See also 2018 Pink Sheet at 2.

¹⁸ 2018 Pink Sheet at 15-16.

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sites.”¹⁹ Similarly, social media posts’ “official” status does not exhaust until after the post is no longer active on official social media pages, therefore, a campaign social media account “may not share, like, retweet, etc., a post from an official social media account because that post’s official use has not been exhausted if it is still active on the official [account].”²⁰

The Committee explains that an “official resource” has been exhausted, when as a general matter, the material “has been released to the media or the public, and the congressional office is no longer using it;[however,] the standard is not whether something is in the public domain. Depending on the subject matter, relevance, and where the materials appear, each official product may exhaust its official use at different times. The standard applies to all type[s] of media, including, but not limited to, documents, recordings, and social/new media posts. The key in each case is that the item in question must no longer appear anywhere on an official site or be used for an official purpose.”²¹ However, an exception exists when considering press releases. Unlike other official material, press releases exhaust their official use after an event has occurred or 72 hours after the press release is issued, whichever is later.²²

c. Campaigns are Prohibited from Using Multimedia of House Floor and Committee Proceedings

In the 2018 Pink Sheet, the Committee explains that “House rules specifically prohibit the use of footage of House Floor activities and committee proceedings for any partisan political purpose.”²³

In the Matter of Allegations Relating to Representative Ben Ray Luján, the Committee extended the prohibition on Members posting materials originally sourced from the House Broadcast network to the Member’s staff.²⁴ It is of no consequence whether the Member posted the material themselves or it was posted by staff without their knowledge because “[t]he Committee has long held that Members of the House are responsible for ensuring that individuals speaking on their behalf comply with applicable House rules.”²⁵

It is important to note that “[t]he ‘exhaust its official use’ standard **does not** apply to footage of House Floor footage or committee proceedings. If such footage is embedded in a third party article or news clip, the campaign may use the article or clip if otherwise appropriate, but must first remove the prohibited footage.”²⁶ The guidance goes further counseling Members to “[e]ducate campaign staff about the prohibition on the use of footage of committee proceedings and House Floor activities to avoid any inadvertent impermissible use.”²⁷

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Id.* at 15. (“[S]ocial media posts follow the standard exhaustion rule and not the 72-hour rule for press releases.”).

²³ *Id.*

²⁴ House Committee on Ethics, *In the Matter of Allegations Relating to Representative Ben Ray Luján*, H. Rep. 115-272, 115th Cong., 1st Sess. (2017) (“In the Matter of Ben Ray Luján”) at 12.

²⁵ *Id.*

²⁶ 2018 Pink Sheet at 10 (emphasis added).

²⁷ *Id.*

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d) *Members are Prohibited from Providing Hyperlinks to Official Material on Campaign Affiliated Sites and Social Media*

*The House Ethics Manual instructs Members that “[their] campaign website may **not** include a link to the congressional office site; and [a] congressional office site may **not** be advertised on the Member’s campaign website or on materials issued by the Member’s campaign.”*²⁸

*In a 2012 Pink Sheet the Committee on Ethics provided updated guidance allowing for a limited exception to when a Member may provide a hyperlink on a campaign site [which includes Facebook, Twitter, and YouTube] to an official site stating that it is permissible “if [the] hyperlink is presented in a brief notification that has been approved by the Committee on Ethics in advance.”*²⁹ *The Committee goes on to provide one approved notification:*

*“Thank you for visiting my campaign (Web site/Twitter page/ Facebook page). If your intention was to visit my official House of Representatives Web site/Twitter page/ Facebook page. Please click here. [The “click here” would be hyperlinked to the appropriate Web site.]”*³⁰

*Prior to using “[a]ny other notification [Members] must receive written approval [from] the Committee on Ethics.”*³¹

17. Members’ Congressional Handbook

*The Members’ Congressional Handbook (“Congressional Handbook”) defines and explains the general uses of a Members’ Representational Allowance (“MRA”) as being “available to support the conduct of official and representational duties to the district from which he or she is elected.”*³² *Specifically, to reimburse the “[o]rdinary and necessary expenses incurred by the Member or the Member’s employees . . .” during the performance of official duties in accordance with the regulations prescribed elsewhere in the Congressional Handbook.*³³

*The Congressional Handbook describes those expenses which are “ordinary and necessary” as “reasonable expenditures in support of official and representational duties to the district from which he or she is elected that are consistent with all applicable federal laws, Rules of the House of Representatives and regulations of the Committee on House Administration.”*³⁴ *According to the Congressional Handbook, the MRA may only be used on expenses “the primary purpose of*

²⁸ HOUSE ETHICS MANUAL at 178.

²⁹ Committee on Ethics, Memorandum for All Members, Officers, and Employees: Change in Rules Regarding Providing a Hyperlink from Campaign Internet Sites to Official Internet Sites (March 9, 2012), at 1 (emphasis omitted).

³⁰ *Id.*

³¹ *Id.*

³² CONGRESSIONAL HANDBOOK at 1.

³³ *Id.* at 2.

³⁴ *Id.* at 1.

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*which are official and representational” in nature “and which are incurred in accordance with
the Handbook.”*³⁵

*The Congressional Handbook restates that “[t]he MRA may only be used for official and
representational expenses” and asserts that “[t]he MRA may not pay for campaign expenses.”*³⁶

**B. Rep. Kahele May Have Misused Official Resources for Campaign or Political
Purposes or Established an Unofficial Office Account**

18. Rep. Kahele was sworn in as a Member of the U.S. House of Representatives on January 3, 2021.³⁷ During the majority of this review, Rep. Kahele was also a gubernatorial candidate in Hawaii.³⁸ Rep. Kahele maintains official social media accounts on Twitter, Facebook, Instagram, and YouTube.³⁹
19. Both Rep. Kahele’s congressional and gubernatorial campaigns were very active on social media. The OCE found that Rep. Kahele’s campaigns maintained social media accounts on Facebook, YouTube, Instagram, and Twitter.⁴⁰
20. In a letter to the OCE, Rep. Kahele asserted that his Instagram and Twitter accounts were maintained as personal accounts.⁴¹ This runs contrary to the explicit campaign-nature of the content posted, especially on Twitter and Instagram, the fact that Rep. Kahele’s campaign website historically linked directly to these social media accounts, and the fact that the accounts included fundraising requests.⁴²

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ See Press Release, Rep. Kai Kahele, Congressman Kaiali’i Kahele Sworn in as a Member of 117th Congress (January 4, 2021) <https://kahele.house.gov/media/press-releases/congressman-kaialii-kahele-sworn-member-117th-congress>.

³⁸ *Kai Kahele For Governor*, <http://web.archive.org/web/20220709092307/https://www.kaikahele.com/> (last visited Aug. 16, 2022). On August 13, 2022, Rep. Kahele was defeated in a primary election for Hawaii Governor.

³⁹ Congressman Kaiali’i Kahele (@RepKahele), TWITTER, <https://twitter.com/RepKahele> (last visited Aug. 12, 2022); Congressman Kaiali’i Kahele (@RepKahele), FACEBOOK, <https://www.facebook.com/RepKahele/> (last visited Aug. 12, 2022); Congressman Kaiali’i Kahele (@RepKahele), INSTAGRAM, <https://www.instagram.com/repkahele/> (last visited Aug. 12, 2022).

⁴⁰ Kai Kahele (@KaiKahele), FACEBOOK, <https://www.facebook.com/KaiKahele/> (last visited Aug. 12, 2022); Kai Kahele (@kkahele), YOUTUBE, <https://www.youtube.com/user/kkahele> (last visited Aug. 12, 2022); Kai Kahele (@KaiKahele), INSTAGRAM, <https://www.instagram.com/kaikahele/> (last visited Aug. 19, 2022); Kai Kahele (@kaikahele), TWITTER, <https://twitter.com/kaikahele> (last visited Aug. 12, 2022).

⁴¹ Letter from Rep. Kahele to Omar Ashmawy, Chief Counsel and Staff Director, June 19, 2022; Kai Kahele (@KaiKahele), INSTAGRAM, <https://www.instagram.com/kaikahele/> (last visited Aug. 19, 2022); Kai Kahele (@kaikahele), TWITTER, <https://twitter.com/kaikahele> (last visited Aug. 12, 2022).

⁴² KaiKahele.com, Archived Copy of Kahele for Congress Website (Archived March 16, 2022) (Exhibit X at 22-9485_x); Kai Kahele (@kaikahele), TWITTER (Mar. 31, 2021, 11:18 AM), <https://twitter.com/kaikahele/status/1377279038964703237?s=20&t=aGSXq1dde9F-BjRVfvm8sA>; Kai Kahele (@kaikahele), TWITTER (May 16, 2022, 3:37 PM), https://twitter.com/kaikahele/status/1526285688651452416?s=20&t=frxaUHp4NdUloz_jPz9-sw.

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21. During an interview with the OCE, Rep. Kahele conceded that his personal accounts were used for campaign purposes.⁴³ Rep. Kahele indicated that he was the only one with access to these accounts,⁴⁴ and when asked whether his “personal” accounts included congressional campaign material, Rep. Kahele answered in the affirmative clarifying “[f]rom my congressional campaign.”⁴⁵
22. Moreover, following his loss in the Hawaii gubernatorial primary, when he was also no longer running for reelection to Congress, Rep. Kahele made the campaign-utilized Instagram account private and no longer publicly viewable. This further suggests that the previously public social media account had served a campaign-related purpose.
23. This OCE review focused on material Rep. Kahele posted using his campaign-utilized Instagram and Twitter accounts. Specifically, the OCE found a pattern of misuse of official resources for campaign purposes throughout Rep. Kahele’s social media accounts. Across all platforms, the OCE discovered over 400 images and video postings that violate House rules and Committee guidance governing the posting and resharing of official imagery and resources. These include: (1) repeatedly posting images of himself at the Capitol or in Congressional owned buildings; (2) sharing depictions of the seal of the House of Representatives; (3) posting audio and video initially captured on the House Broadcasting System; (4) using imagery and audio of committee proceedings; and (5) frequently sharing links to official websites or accounts.
24. Additionally, the OCE found that Rep. Kahele often used the campaign-focused social media accounts to share or retweet official communications and press releases or promote official events. Such practice of using a campaign resource to share official communications may implicate the rules concerning unofficial office accounts because non-official funds were used to defray the expense of official communications.
25. The OCE found that the scale of the misuse and the scope of Rep. Kahele’s disregard for creating a bright line separation on social media between campaign purposes and official resources was unique and disproportionate compared to other Members of Congress. Even if Rep. Kahele believed that the accounts were personal in nature, the campaign nature of the social media accounts was unmistakable necessitating safeguards against misuse.
26. In his interview with the OCE, Rep. Kahele displayed a lack of familiarity with the rules concerning misuse of official resources for political purposes, despite asserting that he had received the relevant training.⁴⁶ Moreover, Rep. Kahele failed to provide the OCE with a complete production related to a series of problematic social media posts, in spite of repeated efforts by the OCE to work with Rep. Kahele and his staff on identifying the missing materials.

⁴³ Interview of Rep. Kaiali’i Kahele, (“Rep. Kahele Transcript”) at 24, August 10, 2022 (Exhibit 2 at 22-9485_0031).

⁴⁴ *Id.* (Exhibit 2 at 22-9485_0017).

⁴⁵ *Id.* (Exhibit 2 at 22-9485_0022).

⁴⁶ *Id.*

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27. In this review, the OCE examined over 4,000 postings made using Rep. Kahele's campaign Instagram and Twitter accounts and found hundreds that may be violative of House rules and guidance aimed at regulating Member's use of official resources while posting to social media. Below is a representative sampling of the violations described above:

a. Imagery of the Capitol, Congressionally Owned Buildings, and Office Space

28. The OCE identified hundreds of examples of Rep. Kahele sharing images of himself in congressional buildings and office space, present on the floor of the House or in Committee proceedings, or otherwise including images of the Capitol complex in posts on his campaign Instagram and Twitter account.

29. In the example below, dated April 28, 2022, Rep. Kahele can be seen in front of his office in the Capitol complex.⁴⁷ During an interview with OCE staff, Rep. Kahele was shown the post and asked to describe his level of awareness about House rules governing the use of images on congressional property.⁴⁸ Rep. Kahele indicated that he was "sure I got training on that."⁴⁹ Despite receiving that training, Rep. Kahele denied having any concerns that the below image could possibly violate House rules.⁵⁰



⁴⁷ Kai Kahele (@kaikahele), *Longworth Building Photograph*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/Cc62cz2spky/?utm_source=ig_web_copy_link.

⁴⁸ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0024).

⁴⁹ *Id.* (Exhibit 2 at 22-9485_0025).

⁵⁰ *Id.* (Exhibit 2 at 22-9485_0026).

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30. On March 29, 2022, Rep. Kahele posted the image below depicting him inside his District office.⁵¹



31. On January 13, 2021, Rep. Kahele posted a video depicting him casting a “Yea” vote on the House floor.⁵²



⁵¹ Kai Kahele (@kaikahele), *District Office Photograph*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CbemuibOt_r/?utm_source=ig_web_copy_link.

⁵² Kai Kahele (@kaikahele), *Video Casting a Vote*, TWITTER (last visited August 16, 2022) <https://twitter.com/kaikahele/status/1349463424724512770?s=20&t=6zccq8jUnJQsUmwqjbu6sbg>; see also Kai Kahele (@kaikahele), *Rep. Kahele Presiding Over the House Point of View Image*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CY9dZYaFc71/?utm_source=ig_web_copy_link.

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b. Photos, Audio, and Video Initially Captured by the House's Official Broadcasting System for Partisan Political Purposes

32. Rep. Kahele also posted material to his campaign accounts from the Official House Broadcasting System.
33. On May 12, 2021, Rep. Kahele posted the image below depicting him presiding over the House.⁵³ While the image was taken from CNN, the footage of Rep. Kahele is sourced from the Official House Broadcasting System.⁵⁴ In an interview with the OCE, Rep. Kahele was shown the photograph below and asked to describe his level of awareness about the rules governing the use of footage from the House floor.⁵⁵ Rep. Kahele referred the OCE to his previous answer in which he indicated he had received training on the matter.⁵⁶ However, when prompted by OCE staff about whether the below image raised any concerns that it could possibly violate House rules, Rep. Kahele indicated that he had no concerns about the image.⁵⁷



⁵³ Kai Kahele (@kaikahele), *Rep. Kahele Presiding Over the House B-roll*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/COwr4U3s0Js/?utm_source=ig_web_copy_link.

⁵⁴ See *In the Matter of Ben Ray Luján* at 12 (explaining that derivative use of a video capture by the media that was originally sourced from the House Broadcast system is not permissible).

⁵⁵ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0025).

⁵⁶ *Id.*

⁵⁷ *Id.* (Exhibit 2 at 22-9485_0026).

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34. On July 30, 2021, Rep. Kahele posted video of a speech he gave from the House floor.⁵⁸ Rep. Kahele posted the same video to his official Instagram account on July 21, 2021.⁵⁹



35. On January 18, 2022, Rep. Kahele retweeted a video from his official Twitter account depicting a portion of a floor speech.⁶⁰



⁵⁸ Kai Kahele (@kaikahele), *Rep. Kahele Floor Speech*, INSTAGRAM (last visited July 19, 2022)

https://www.instagram.com/p/CR-AGUNINJ9/?utm_source=ig_web_copy_link.

⁵⁹ Congressman Kai Kahele (@repkahele), *Rep. Kahele Floor Speech*, INSTAGRAM (last visited July 19, 2022)

https://www.instagram.com/tv/CRmRZooNW_2/?utm_source=ig_web_copy_link.

⁶⁰ Kai Kahele (@kaikahele), *Rep. Kahele Video Clip of Floor Speech*, TWITTER (last visited August 16, 2022)

https://twitter.com/RepKahele/status/1483604525982355468?s=20&t=frxaUH4NdUloz_jPz9-sw.

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c. Depictions of the Seal of the House of Representatives.

36. The OCE also found dozens of examples of Rep. Kahele using images on his campaign social media accounts utilizing the official House seal, creating potential confusion about the official or campaign nature of the postings from the unofficial accounts.
37. On March 17, 2022, Rep. Kahele posted the image below showing him behind a podium with the seal of the House of Representatives hanging in front.⁶¹ During an interview with OCE staff, Rep. Kahele was asked to describe his level of awareness about the rules governing the use of the official House seal.⁶² Again, Rep. Kahele referred OCE staff to his previous answer that he had received training on the matter as part of new Member orientation, but did not have any concerns about the posting.⁶³



⁶¹ Kai Kahele (@kaikahele), *Rep. Kahele Speech in Front of Seal*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CbOOVDSvtJo/?utm_source=ig_web_copy_link.

⁶² Rep. Kahele Transcript (Exhibit 2 at 22-9485_0025).

⁶³ *Id.*

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38. On June 9, 2021, Rep. Kahele posted an image showing him in his District office with three depictions of the seal of the House of Representatives.⁶⁴



39. On February 18, 2022, Rep. Kahele shared another image showing him in his District office.⁶⁵ In the image, Rep. Kahele is gesturing up toward one seal on the wall above him and is flanked by another seal on the flag located to his left.



⁶⁴ Kai Kahele (@kaikahele), *Rep. Kahele in District Office with Seal Depictions*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CP7MQDLshuF/?utm_source=ig_web_copy_link.

⁶⁵ Kai Kahele (@kaikahele), *Rep. Kahele in District Office*, TWITTER (last visited August 16, 2022) https://twitter.com/kaikahele/status/1494785465773289472?s=20&t=frxaUHp4NdUloz_jPz9-sw.

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d. Video, Audio, or Photography of Committee Proceedings for Partisan Political Purposes.

40. Additionally, Rep. Kahele frequently shared images or videos to the campaign social media account of himself at Committee proceedings.
41. In the example below dated April 29, 2022, Rep. Kahele can be seen on the dais chairing a House committee hearing.⁶⁶ During an interview with the OCE, Rep. Kahele was asked to describe his level of awareness governing the use of footage from committee hearings.⁶⁷ Again, Rep. Kahele referred OCE staff to his previous answer that he had received training on the matter and did not identify specific concerns.⁶⁸



⁶⁶ Kai Kahele (@kaikahele), *Rep. Kahele at Committee Dais*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/Cc7J4xMukCu/?utm_source=ig_web_copy_link.

⁶⁷ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0025).

⁶⁸ *Id.*

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42. On December 2, 2021, Rep. Kahele posted the image below depicting his nameplate on a Committee hearing room dais with a link to “tune in” to watch the hearing.⁶⁹



⁶⁹ Kai Kahele (@kaikahele), *Rep. Kahele’s Nameplate on Committee Dais*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CW_MIdCl-pp/?utm_source=ig_web_copy_link.

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43. In another example, on February 4, 2021, Rep. Kahele retweeted a video clip depicting him in a committee hearing.⁷⁰



e. Distributing Graphics Developed Using Official Resources and Promoting Official Events.

44. In addition to sharing photos and images in House office buildings, and other materials implying the imprimatur of the House of Representatives, Rep. Kahele shared official materials to his campaign social media accounts that had not yet exhausted their official use and used his accounts to promote official events.
45. In the example below, on April 11, 2022, Rep. Kahele shared his official district graphic to his campaign Instagram account.⁷¹ The same post also appears on Rep. Kahele's official Instagram account.⁷² The official district graphic still remains in use by Rep. Kahele's official website as of the date of publication of this report, and had not exhausted its official use.⁷³ During an interview with OCE staff, Rep. Kahele did not acknowledge any concerns about the use of this image.⁷⁴

⁷⁰ Kai Kahele (@kaikahele), *Rep. Kahele During Committee Hearing*, TWITTER (last visited August 16, 2022) <https://twitter.com/kaikahele/status/1357530750183235587?s=20&t=ea5X-hIPy57OvkmZOXL8jw>.

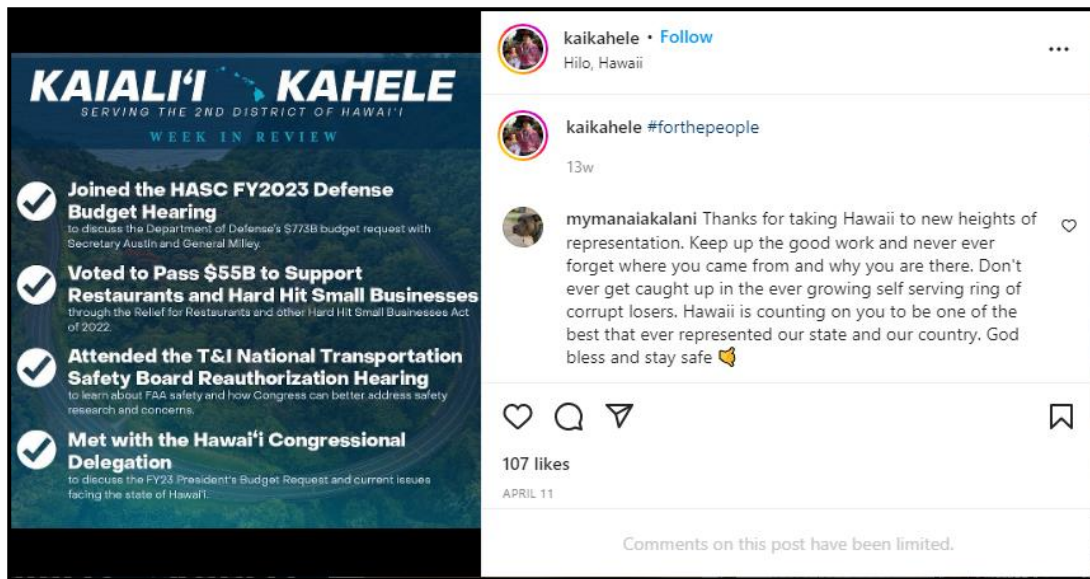
⁷¹ Kai Kahele (@kaikahele), *Rep. Kahele Infographic*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CcOIUncv1E8/?utm_source=ig_web_copy_link.

⁷² Congressman Kaiali'i Kahele (@repkahele), *Rep. Kahele Infographic*, INSTAGRAM (last visited August 15, 2022), https://www.instagram.com/p/CcOI0znutl/?utm_source=ig_web_copy_link.

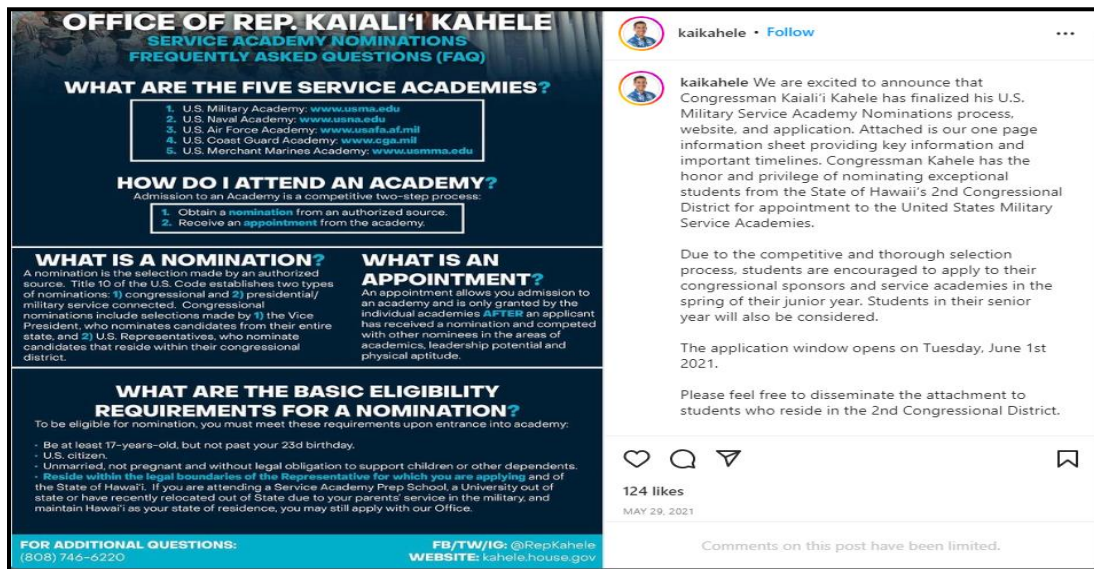
⁷³ Rep. Kahele, Official Website, <https://kahele.house.gov/> (last visited Aug. 18, 2022).

⁷⁴ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0024).

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46. On May 29, 2021, Rep. Kahele shared the below graphic from his official Instagram account, which was likely developed by official staff.⁷⁵ It also contains a link to his official House website and the handle for his official social media accounts.⁷⁶



⁷⁵ Kai Kahele (@kaikahele), *Rep. Kahele Infographic with Information about Official Platforms*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CPd0Q_bszpZ/?utm_source=ig_web_copy_link; Accord Congressman Kaiali'i Kahele (@repkahele), *Rep. Kahele Infographic with Information about Official Platforms*, INSTAGRAM (last visited August 15, 2022), https://www.instagram.com/p/CPd65BejQYZ/?utm_source=ig_web_copy_link.

⁷⁶ *Id.*

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47. On March 23, 2021, Rep. Kahele posted the graphic below to his campaign Instagram account.⁷⁷ Problematically, the graphic shares Rep. Kahele's official Facebook account handle and advertises an event with his official office about the legislation. This indicates the use of a campaign account to promote an official event, and conflicts with the rules concerning unofficial office accounts.



⁷⁷ Kai Kahele (@kaikahele), *Rep. Kahele Infographic about Presentation and Q&A on H.R. 1925*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CMxCEP_McwO/?utm_source=ig_web_copy_link. See also Kai Kahele (@kaikahele), *Rep. Kahele Local Projects Graphic*, Instagram (last visited July 19, 2022) https://www.instagram.com/p/Ca8NICFvxQT/?utm_source=ig_web_copy_link; *Accord Congressman Kaiali'i Kahele (@repkahele), Rep. Kahele Local Projects Graphic*, Instagram (last visited August 15, 2022), https://www.instagram.com/p/Ca761lvunVi/?utm_source=ig_web_copy_link; Kai Kahele (@kaikahele), *March 22, 2022 Official Graphic Post*, Instagram (last visited July 19, 2022) https://www.instagram.com/p/CbbJfc8vGcL/?utm_source=ig_web_copy_link; Kai Kahele (@kaikahele), *March 20, 2022 Official Graphic Post*, Instagram (last visited July 19, 2022) https://www.instagram.com/p/CbVS62plQtj/?utm_source=ig_web_copy_link.

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48. Similarly, on February 8, 2022, Rep. Kahele retweeted a graphic advertising an official event from his official Twitter account to his campaign Twitter account.⁷⁸



f. Sharing Official Social Media Posts to Campaign Accounts

49. The OCE also identified many examples of Rep. Kahele sharing or retweeting official social media posts to his campaign accounts, a practice explicitly prohibited because the underlying content has not exhausted its official use.⁷⁹
50. On June 23, 2022, Rep. Kahele retweeted content that was initially posted to his official Twitter account.⁸⁰ During an interview with OCE staff, Rep. Kahele was asked whether he was aware of the rules that govern the content that can be retweeted from an official account.⁸¹ Rep. Kahele responded affirmatively.⁸² When asked whether he ever had any concerns about whether this image could possibly violate House rules, Rep. Kahele told OCE staff: “I don't know why that would violate House rules.”⁸³

⁷⁸ Kai Kahele (@kaikahele), *Rep. Kahele Red Hill Graphic*, TWITTER (last visited August 16, 2022) https://twitter.com/RepKahele/status/1491233283501596675?s=20&t=frxaUH4NdUloz_jPz9-sw.

⁷⁹ 2018 Pink Sheet at 15-16.

⁸⁰ Kai Kahele (@kaikahele), *Rep. Kahele in Committee Hearing*, TWITTER (last visited August 16, 2022) <https://twitter.com/kaikahele/status/1540142396469657602?s=20&t=aGSXq1dde9F-BjRVfvm8sA>.

⁸¹ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0028).

⁸² *Id.*

⁸³ *Id.*

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51. Also, on April 23, 2022, Rep. Kahele shared a press release on his campaign social media account on the same day the official office distributed the same press release on Rep. Kahele's official website.⁸⁴ Therefore, it had not exhausted its official use.



⁸⁴ Kai Kahele (@kaikahele), *Rep. Kahele Press Release*, INSTAGRAM (last visited July 19, 2022) https://www.instagram.com/p/CcrhHY9OrMu/?utm_source=ig_web_copy_link; See also Press Release, Rep. Kahele, *Rep. Kahele: Department of Defense Drops its Appeal On Red Hill Emergency Order* (April 23, 2022) <https://kahele.house.gov/media/press-releases/rep-kahele-department-defense-drops-its-appeal-red-hill-emergency-order>.

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g. Hyperlinks to Official House Resources on Campaign Social Media Platforms.

52. Finally, Rep. Kahele frequently shared links on his campaign accounts to official websites and congressional resources in contravention to clear Committee guidance.⁸⁵

53. On April 6, 2022, Rep. Kahele posted a link to an official House website, which is located at the bottom of the infographic.⁸⁶ During an interview with the OCE, Rep. Kahele did not indicate any concerns about this practice.⁸⁷



54. Additionally, on December 2, 2021, Rep. Kahele posted the content below, which included links to the Armed Services Committee's official YouTube channel.⁸⁸

⁸⁵ Committee on Ethics, *Memorandum for All Members, Officers, and Employees: Change in Rules Regarding Providing a Hyperlink from Campaign Internet Sites to Official Internet Sites* (March 9, 2012), at 1.

⁸⁶ Kai Kahele (@kahele), *Rep. Kahele's Official Resources Infographic*, INSTAGRAM (last visited August 15, 2022), <https://www.instagram.com/p/CcA71AulVwI/>.

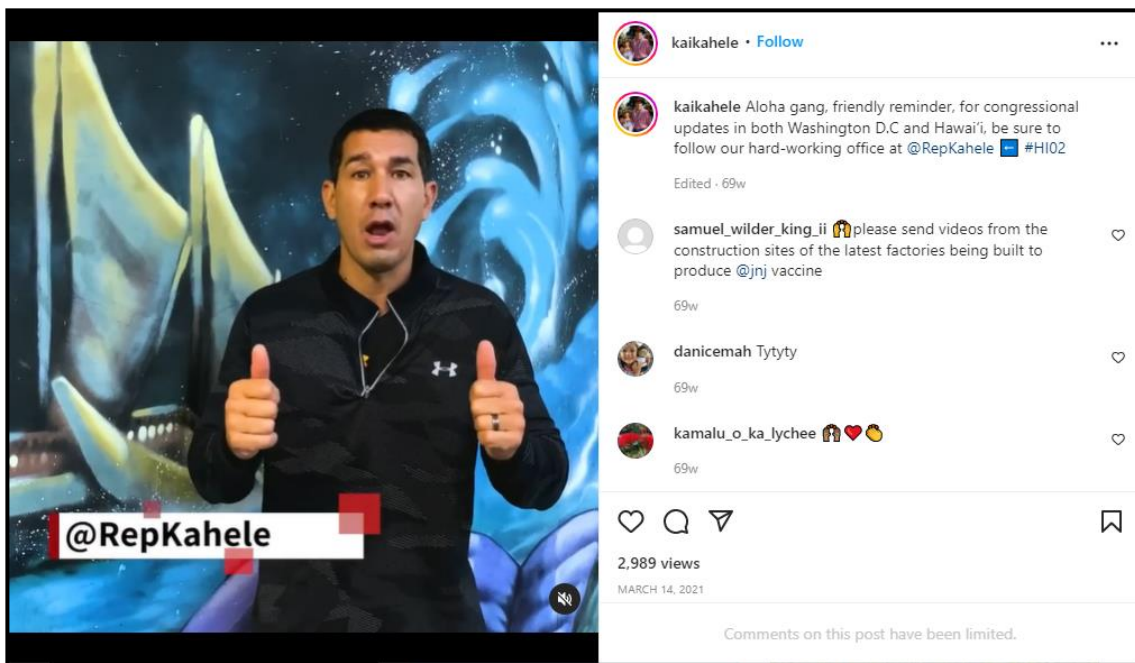
⁸⁷ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0025).

⁸⁸ Kai Kahele (@kaikahele), *Rep. Kahele Link to Armed Services Committee*, TWITTER (last visited August 16, 2022) https://twitter.com/RepKahele/status/1466462022460227592?s=20&t=frxaUHp4NdUloz_jPz9-sw.

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55. On March 14, 2021, Rep. Kahele posted the image displayed below.⁸⁹ The post displays Rep. Kahele's official Instagram handle in the image itself and Rep. Kahele has also provided the handle in the description as well. The handle in the description is displayed in blue indicating that Rep. Kahele has linked his official account to the post.



⁸⁹ Kai Kahele (@kahele), *Rep. Kahele Sharing Instagram Handle to Official Account*, INSTAGRAM (last visited August 15, 2022), https://www.instagram.com/p/CMa_va8B7rn/?utm_source=ig_web_copy_link.

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56. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Kahele misused official resources for campaign or political purposes or used campaign funds to defray official expenses.

III. REP. KAHELE MAY HAVE TAKEN OFFICIAL ACTION ON ISSUES RELATED TO HIS EMPLOYER THAT MAY AFFECT HIS FINANCIAL INTEREST OR MAY HAVE DISPENSED SPECIAL FAVORS OR PRIVILEGES

A. Applicable Law, Rules, and Standards of Conduct

57. Code of Ethics for Government Service

Under Section 5 of the Code of Ethics for Government Service, “Any person in Government Service should . . . [n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”⁹⁰

58. House Rules

Under House Rule 23, clause 3, Members “may not permit compensation⁹¹ to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”

59. House Ethics Manual

According to the House Ethics Manual, a Member’s action in “sponsoring legislation, advocating or participating in an action by a House Committee” entails “a degree of advocacy above and beyond that involved in voting, and thus a Member’s decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection.”⁹² A Member who considers advocating on a matter that may affect his “personal financial interest . . . should first contact the Standards Committee for guidance.”⁹³

The Committee on Ethics has advised that “it is improper to ‘provid[e] official assistance to entities in which the Member has a significant financial interest.’”⁹⁴ “[O]fficial action under this definition may be improper even where it is not independently wrongful . . . the impropriety

⁹⁰ Code of Ethics for Government Service, H.R. Con. Res. 175, 85th Cong. (1958) (enacted).

⁹¹ The Committee on Ethics has interpreted “compensation” to include “the service of a Member’s own ‘narrow, financial interests as distinct from those of their constituents.’” House Committee on Ethics, *In the Matter of Allegations Relating to Representative Shelley Berkley*, H. Rep. 112-716, 112th Cong., 2d Sess. (2012) (“In the Matter of Shelley Berkley”) at 38 (quoting HOUSE ETHICS MANUAL at 314).

⁹² HOUSE ETHICS MANUAL at 237.

⁹³ *Id.*

⁹⁴ *In the Matter of Shelley Berkley* at 39 (quoting House Committee on Ethics, *In the Matter of Allegations Related to Representative Maxine Waters*, H. Rep. 112-690, 112th Cong., 2d Sess. (2012) (“In the Matter of Maxine Waters”) at 15.

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of official action in this context would be based solely on whether the action would inure to their narrow personal financial benefit.”⁹⁵

The Committee has advised that its precedents “should not be read to permit Members free rein to act on behalf of a single entity in which they have a publicly disclosed financial interest, merely because there are numerous shareholders.”⁹⁶ “Precedent on conflicts of interest do contemplate that disclosure, especially in instances where a Member’s interests are in line with the Member’s constituents, is the ‘preferred method of regulating possible conflicts of interest.’ However, such disclosure must be full and complete and, even if complete, does not always alleviate a conflict or permit a Member to act.”⁹⁷

Code of Ethics for Government Service, Section 5, Clause 1

The House Ethics Manual advises that the “prohibition against doing any special favors for anyone in one’s official capacity is a fundamental standard of conduct, and it applies to an official’s conduct with regard to not only his or her spouse or other family members, but more broadly to any person.”⁹⁸

According to the House Ethics Manual, “Members and employees should undertake for one individual or business no more than they would be willing to do for others similarly situated.”⁹⁹

Code of Ethics for Government Service, Section 5, Clause 2:

According to the Committee, “[a] respondent violates clause 2 of Section 5 where (1) she accepts a benefit; and (2) reasonable persons could construe the receipt of that benefit as influencing the performance of her duties.”¹⁰⁰

The Committee has also noted that “Section 5 of the Code of Ethics does not require proof of a quid pro quo.”¹⁰¹ The Committee has advised that the “problem” under Section 5, Clause 2 is whether the Member recognized “that the public might, and reasonably could, view his response to [a] request as motivated by his substantial financial investment”¹⁰² According to Committee guidance, advocacy on behalf of the interests of a class generally, through a message conveyed by the “representatives of a single” non-constituent entity, “could reasonably be

⁹⁵ *Id.* at 39.

⁹⁶ In the Matter of Maxine Waters at 14.

⁹⁷ In the Matter of Shelley Berkley at 42 (citations omitted).

⁹⁸ HOUSE ETHICS MANUAL at 245.

⁹⁹ *Id.* at 350.

¹⁰⁰ In the Matter of Shelley Berkley at 46.

¹⁰¹ House Committee on Ethics, In the Matter of Allegations Relating to Representative Phil Gingrey, H. Rep. 113-664, 113th Cong., 2d Sess. (2014) at 20.

¹⁰² *Id.* at 21.

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construed” as advocacy that would have an impact on the non-constituent entity’s receipt of funds and consequently benefit the Member’s financial interest in the entity.^{103, 104}

*In the Matter of Allegations Relating to Representative Roger Williams, the Committee clarified that, “with respect to Section 5 of the Code of Ethics, ‘the Committee has consistently prohibited acting on matters in which a Member has a financial interest precisely because the public would construe such action as self-dealing, whether the Member engaged in the action for that reason or not’ (emphasis added). Under this standard, [t]he only question is whether “reasonable persons” “might construe” [a Member’s interest] as influencing the performance of his government duties’ or whether ‘the public might and reasonably could, view [the official action] as motivated by his substantial [financial interest].” In determining how a reasonable person might view the official action, the Committee has “typically considered the totality of the circumstances in each case.” In conducting that analysis, the Committee has focused on two factors and several subfactors: (1) What is the nature of the financial interest? Including (a) the actual dollar value of the interest, (b) the relative value of the interest as compared to the members other investments, (c) whether the investment is private or public, (d) whether the interest is direct or imputed, and (e) whether the interest is aligned with the interests of constituents; and (2) What is the nature of the official action? Including (a) whether the action was consistent with others who requested legislative assistance, (b) whether other Members participated in the official action, (c) whether the action was a public or private official act, (d) the potential effect of the proposed activity on the official’s financial interest, and (e) whether the official action affects a large class or narrowly affects a single or narrow group of entities in which the Member retains a financial interest.*¹⁰⁵

B. Rep. Kahele’s May Have Accepted Benefits from His Employer that Impacted the Performance of His Congressional Responsibilities or Dispensed Special Favors to Hawaiian Airlines

60. In this review, the OCE analyzed the nature of the relationship between Rep. Kahele, his non-congressional employer Hawaiian Airlines, and the Air Line Pilots Association (“ALPA”). The OCE sought information to determine whether the relationship between Rep. Kahele’s office, Hawaiian Airlines, and ALPA implicated conflict of interest or special favors concerns.
61. The OCE found that Rep. Kahele failed to implement policies or procedures to account for the potential conflicts that might arise due to his close relationship with Hawaiian Airlines and their interests before Congress. Nevertheless, the OCE did not find that Hawaiian Airlines or ALPA exercised undue influence on Rep. Kahele that would lead a reasonable

¹⁰³ *Id.* at 20.

¹⁰⁴ House Committee on Ethics, *In the Matter of Allegations Relating to Representative Roger Williams*, (“In the Matter of Roger Williams”), H. Rep. 115-271, 115th Cong., 1st Sess. (2017) at 12 (applying the totality of circumstances test to determine whether a reasonable person might conclude that a Member took an official action for personal gain).

¹⁰⁵ *Id.* at 12-16.

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person to conclude that his employment and financial ties to Hawaiian Airlines impacted the performance of his congressional duties or that he provided them with special favors.

i. The Relationship Between Rep. Kahele, Hawaiian Airlines and the Air Line Pilots Association

a. Rep. Kahele's Background as a Pilot for Hawaiian Airlines

62. While serving as a Member of Congress, Rep. Kahele has also maintained his license as a commercial pilot.¹⁰⁶ Rep. Kahele began working for Hawaiian Airlines in 2009,¹⁰⁷ where he remained employed as a full-time pilot until October 1, 2020, coinciding with the onset of the COVID-19 pandemic.¹⁰⁸
63. Currently, Rep. Kahele remains employed by Hawaiian Airlines, where he flies commercial flights on a part-time basis to maintain his pilot certification.¹⁰⁹
64. For calendar year 2021, Rep. Kahele reported an annual salary from Hawaiian Airlines of \$29,151.79.¹¹⁰ Rep. Kahele's wife, who is also employed by Hawaiian Airlines as a flight attendant, reported a salary of \$3,173.85.¹¹¹ Additionally, Rep. Kahele holds two tax-deferred Hawaiian Airlines-sponsored Vanguard 401k accounts and a Hawaiian Airlines-sponsored Vanguard retirement savings trust with an aggregate value of \$615,003 to \$1,300,000.¹¹² These Hawaiian Airlines savings accounts make up the largest share of his reportable assets, which otherwise consist of rental properties, a 529 account, and checking accounts.¹¹³
65. In his capacity as a pilot, Rep. Kahele is an active member of ALPA,¹¹⁴ the largest pilot union in the world, representing more than 60,000 pilots from 40 U.S. and Canadian airlines.¹¹⁵

¹⁰⁶ Rep. Kai Kahele, *About*, <https://kahele.house.gov/about> (last visited August 2, 2022).

¹⁰⁷ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0013).

¹⁰⁸ Letter of Agreement between Hawaiian Airlines, Inc. and ALPA in the service of Hawaiian Airlines, Inc. as represented by ALPA, 20-08 Permanent Enhanced Surfer Leave & Extended Enhanced Surfer Leave ("LOA 20-08") July 10, 2020 (Exhibit 7 at 22-9485_0097-0100); Letter from ALPA's Counsel, Simon Latcovich to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics ("Letter from ALPA's Counsel, June 21, 2022"), June 21, 2022.

¹⁰⁹ *Id.*

¹¹⁰ See Rep. Kahele 2021 Annual Financial Disclosure Report, filed May 10, 2022.

¹¹¹ *Id.*; Kai Kahele (@kaikahele), *Rep. Kahele Discussing Family Flight Attendants*, TWITTER (last visited August 22, 2022) <https://twitter.com/kaikahele/status/1324219147069255681>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0038).

¹¹⁵ ALPA, *What We Do*, <https://www.alpa.org/en/about-alpa/what-we-do> (last visited August 12, 2022).

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b. Rep. Kahele's Continued Employment by Hawaiian Airlines While Serving in Congress

66. When Rep. Kahele was elected to Congress in 2020, he was a part-time employee at Hawaiian Airlines.¹¹⁶ Specifically, Rep. Kahele was on “Surfer Leave,” a modified leave status negotiated with ALPA, which allowed Hawaiian Airlines to voluntarily reduce staffing levels during and because of COVID-19 to mitigate furloughs.¹¹⁷
67. In 2020, prior to entering Congress, Rep. Kahele reported \$119,684.93 in income from Hawaiian Airlines.¹¹⁸ In 2021, House rules limited Members of Congress and senior staff to earning a maximum of \$29,595 for outside employment.¹¹⁹ Rep. Kahele’s 2021 reported salary from Hawaiian Airlines fell below the House limits on outside earned income.
68. When asked whether he had any conversations with anyone surrounding his continued employment with Hawaiian Airlines while serving as a Member of Congress, Rep. Kahele stated that he did not.¹²⁰ However, according to witness testimony, and upon review of documents provided by Rep. Kahele, ALPA and Hawaiian Airlines, Rep. Kahele had discussions with his Chief of Staff, ALPA and Hawaiian Airlines executives about potential issues with continuing his employment with Hawaiian Airlines, while serving as a Member of Congress.¹²¹
69. Rep. Kahele then worked with the Committee on Ethics, ALPA, and Hawaiian Airlines to ensure compliance with outside earned income limitations.¹²² On December 29, 2020, Hawaiian Airlines executives joined a conference call with: (i) representatives of ALPA; (ii) Rep. Kahele and his Chief of Staff; and (iii) the House Committee on Ethics.¹²³ During this call, Hawaiian Airlines and ALPA executives described to House Ethics Counsel a proposed arrangement for Rep. Kahele to remain employed with Hawaiian Airlines.¹²⁴ The proposal involved creating a new leave policy for Hawaiian Airlines employees elected to public

¹¹⁶ Letter from ALPA’s Counsel, June 21, 2022. During his interview with the OCE, Rep. Kahele stated that he was a full-time employee of Hawaiian Airlines when he was elected to congress. See Rep. Kahele Transcript (Exhibit 2 at 22-9485_0034). However, documents provided by ALPA, Hawaiian Airlines and Rep. Kahele himself, prove otherwise. The OCE weighed Rep. Kahele’s lack of candor in his interview against testimonial and documentary evidence provided and found Rep. Kahele to lack credibility.

¹¹⁷ *Id.* Surfer leave allowed pilots to receive compensation for 50 hours of work each month and to receive the same benefits as active pilots.

¹¹⁸ Rep. Kahele 2020 New Member Financial Disclosure Report, filed Aug. 16, 2021.

¹¹⁹ Committee on Ethics, *Memorandum for All Members, Officers, and Employees on the 2021 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees* (February 8, 2021).

¹²⁰ *Id.*

¹²¹ Interview of Witness 3 (“Witness 3 Transcript”), August 8, 2022 (Exhibit 4 at 22-9485_0074-75); E-mail from Rep. Kahele’s Chief of Staff to the Staff Director of the House Ethics Committee, April 12, 2022 (Exhibit 5 at 22-9485_0091-93).

¹²² *Id.*

¹²³ Letter from Hawaiian Airlines Counsel to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (“Letter from Hawaiian Airlines Counsel”), June 17, 2022; Letter from ALPA’s Counsel, June 21, 2022.

¹²⁴ *Id.*

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70. Upon review of documents provided by ALPA and Hawaiian Airlines, the OCE found that, when modifying his leave status, Rep. Kahele was not treated differently than similarly situated Hawaiian Airlines employees.

c. Relationship Between Rep. Kahele and Hawaiian Airlines

71. Hawaiian Airlines has business before two of Rep. Kahele's committees in Congress—the Transportation and Infrastructure Committee and the Armed Services Committee.¹²⁷ From 2021 to 2022, Rep. Kahele co-sponsored 464 bills. Of those bills, 30 of them were within the jurisdiction of the Transportation and Infrastructure Committee.¹²⁸
72. Hawaiian Airlines and ALPA lobbied Congress on several matters in which Rep. Kahele was a co-sponsor, most notably, the Fair and Open Skies Act, which aimed to address labor concerns and curb competition from foreign air carriers, and the Sustainable Skies Act, which allows a business tax-credit for each gallon of sustainable aviation fuel.¹²⁹
73. From 2019 to present, Hawaiian Airlines's political action committee has donated \$5,500.00 to Rep. Kahele's congressional campaign committee.¹³⁰

d. Relationship Between Rep. Kahele and ALPA

74. ALPA has been a public supporter of Rep. Kahele's efforts to maintain his positions as both an airline pilot and Member of Congress.¹³¹ Notably, just prior to Rep. Kahele taking office, Hawaiian Airlines and ALPA agreed to a new provision in their leave policy, which granted pilots a leave of absence if they have been appointed or elected to state or federal office or hold a position within a government agency.¹³²

¹²⁵ Letter of Agreement between Hawaiian Airlines, Inc. and ALPA in the service of Hawaiian Airlines, Inc. as represented by ALPA, 20-14 ("Letter of Agreement 20-14"), (Exhibit 6 at 22-9485_0094-96).

¹²⁶ E-mail Exchange between Brett Eckleberg, Labor Relations Counsel at ALPA to Justin Doane, Vice President of Labor Relations at Hawaiian Airlines and Eve Fujimoto, Crew Planner at Hawaiian Airlines, January 4, 2021 (Exhibit 7 at 22-9485_0097-0100).

¹²⁷ Rep. Kai Kahele, About, *Committees and Caucuses*, <https://kahele.house.gov/about/committees-and-caucuses> (last visited May 29, 2022); Witness 3 Transcript (Exhibit 4 at 22-9485_0065).

¹²⁸ Representative Kaiali'i Kahele, *Legislation Sponsored or Co-Sponsored by Kaiali'i Kahele*, <https://www.congress.gov/member/kaiali-i-kahele> (last visited August 12, 2022).

¹²⁹ See ALPA 2021 LD-2 4th Quarter Lobbying Disclosure Report, filed January 20, 2022; Hawaiian Airlines 2021 LD-2 4th Quarter Lobbying Disclosure Report, filed January 20, 2022; see also H.R. 3440 Sustainable Skies Act, <https://www.congress.gov/bill/117th-congress/house-bill/3440>; H.R. 3095 Fair and Open Skies Act, <https://www.congress.gov/bill/117th-congress/house-bill/3095/text>.

¹³⁰ See Rep. Kahele for Congress, FEC Reports of Receipts and Disbursements, 2019-2022.

¹³¹ Air Line Pilots Association, *Our Pilot Groups: Hawaiian*, <https://www.alpa.org/en/about-alpa/our-pilot-groups/pilot-groups/hawaiian> (last visited May 17, 2022).

¹³² Letter of Agreement 20-14 (Exhibit 6 at 22-9485_0094-96).

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75. Additionally, ALPA has expressed the importance of having Rep. Kahele represent their interests in Congress. When discussing potential COVID-19 related pilot furloughs, ALPA highlighted that, “thanks in part to the efforts of a fellow Hawaiian pilot, F/O Kai Kahele, whom Hawaii’s 2nd Congressional District elected to a seat in the U.S House of Representatives in 2020,” pilots across the country were able to avoid extensive periods of furlough or losing employment.¹³³

e. Rep. Kahele’s Involvement in Legislation Impacting the Airline Industry

76. During his short time in Congress, Rep. Kahele has publicly expressed support for legislation which impacts the aviation industry. For example, on May 11, 2021, when the Fair and Open Skies Act was introduced in the House, Rep. Kahele released a press statement describing the purpose of the bill and highlighting his support.¹³⁴

77. In a later press release dated July 28, 2021, Rep. Kahele stated, “[a]s an active commercial air transport pilot, I have experienced first-hand the rigorous training and evaluations that every U.S. pilot, crew member and air carrier is required to complete in order to operate. The Fair and Open Skies Act protects American jobs from unfair competition and ensures no airline can undermine our gold standard for aviation safety.”¹³⁵

ii. Conflict of Interest Analysis

78. In this review, the OCE sought to understand whether Rep. Kahele took actions on behalf of Hawaiian Airlines that would result in a personal financial benefit, dispensed special favors to Hawaiian Airlines, or if reasonable persons would believe that Rep. Kahele’s Hawaiian Airlines employment influenced the performance of his duties.

a. Lack of Safeguards to Prevent Conflict of Interest

79. While Rep. Kahele took legislative action on behalf of the airline industry, he told the OCE that he never considered that his continued employment by Hawaiian Airlines could create the potential for a conflict of interest.¹³⁶

80. When asked by the OCE what he understood his responsibilities were to identify a conflict of interest as it related to his legislative activity, Rep. Kahele stated, “I’m not sure. I don’t know exactly what the policy would be for a conflict of interest because I never perceived that there was a conflict of interest, so I don’t know.”¹³⁷

¹³³ *Id.*

¹³⁴ Rep. Kai Kahele, *Led by T&I Members, Bipartisan Group Introduces Fair and Open Skies Act*, <https://kahele.house.gov/media/press-releases/led-ti-members-bipartisan-group-introduces-fair-and-open-skies-act> (last visited May 17, 2022).

¹³⁵ Rep. Kai Kahele, *T&I Committee Passes Kahele Initiative to Strengthen International Aviation Labor and Safety Standards*, Rep. Kai Kahele (2022), <https://kahele.house.gov/media/press-releases-ti-committee-passes-kahele-initiative-strengthen-international-aviation-labor> (last visited May 17, 2022).

¹³⁶ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0041).

¹³⁷ *Id.* (Exhibit 2 at 22-9485_0042).

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81. The OCE staff found that Rep. Kahele did not have specific policies or procedures in place to identify potential conflicts of interest as it related to his employment with Hawaiian Airlines. In fact, Rep. Kahele never had discussions with his congressional staff to address his employment with Hawaiian Airlines or membership with ALPA, and interaction with these entities.¹³⁸
82. Witness 3, Rep. Kahele's Chief of Staff, explained that in the conversations that took place in December 2020 with the House Ethics Committee, Rep. Kahele received specific guidance about a potential for a conflict of interest as it related to his membership on any congressional committees.¹³⁹ Witness 3 recalls that Rep. Kahele was instructed to "pay special attention to anything that is of a personal pecuniary interest."¹⁴⁰
83. In contrast, Rep. Kahele denied having any conversations discussing anything other than the limit on his outside employment salary, despite current staffers and documents provided by Rep. Kahele proving otherwise.¹⁴¹

b. No Evidence of Special Favors or Access for Hawaiian Airlines

84. In determining whether ALPA or Hawaiian Airlines was granted special favors or access by Rep. Kahele, OCE staff reviewed the frequency and substance of Hawaiian Airlines and ALPA's communications with Rep. Kahele's congressional office.
85. The OCE reviewed thousands of emails involving Rep. Kahele's congressional staff, ALPA and Hawaiian Airlines, and did not find any emails showing problematic activity. Communications indicate that when ALPA or Hawaiian Airlines were interested in setting up a meeting with Rep. Kahele or his staff, they both followed the normal course and contacted Rep. Kahele's Scheduler or Legislative Director to inquire about proper protocol.¹⁴² To the extent Rep. Kahele, ALPA, or Hawaiian Airlines communicated regarding legislative matters, those communications appear to have been standard communications for Member offices and stakeholders related to status updates and legislative priorities.¹⁴³ The OCE also analyzed the relationship between Rep. Kahele and other airline industry groups.¹⁴⁴ There was no indication that Rep. Kahele undertook any business for ALPA or Hawaiian Airlines that he would not have performed for other similarly situated interest groups.

¹³⁸ Witness 3 Transcript (Exhibit 4 at 22-9485_0087-88).

¹³⁹ *Id.* (Exhibit 4 at 22-9485_0085).

¹⁴⁰ *Id.*

¹⁴¹ Rep. Kahele Transcript (Exhibit 2 at 22-9485_0035-37).

¹⁴² Interview of Witness 2 ("Witness 2 Transcript"), August 8, 2022, (Exhibit 8 at 22-9485_0122-125); Witness 3 Transcript (Exhibit 4 at 22-9485_0067-68).

¹⁴³ Interview of Witness 1 ("Witness 1 Transcript") August 5, 2022, (Exhibit 9 at 22-9485_0154); Interview of Witness 4 ("Witness 4 Transcript") August 9, 2022, (Exhibit 10 at 22-9485_0204-205).

¹⁴⁴ Witness 2 Transcript (Exhibit 8 at 22-9485_0112-114); Witness 3 Transcript (Exhibit 4 at 22-9485_0066-71).

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c. No Evidence of Apparent Conflict of Interest

86. The Committee has established parameters for Members of Congress when considering outside employment while in their official capacities.¹⁴⁵ When assessing the potential of a conflict of interest, the Committee has advised that Section 5, clause 2 of the Code of Ethics for Government Service restricts a Member from accepting a benefit that a reasonable person could construe as influencing the performance of the Member's duties.¹⁴⁶
87. According to the Committee, determining whether there is an apparent conflict requires a two-factor analysis of the nature of the financial interest involved and the nature of the official action.¹⁴⁷
88. Regarding Rep. Kahele's financial interest, there is no question that he continued to receive compensation from Hawaiian Airlines, and that he had other financial ties to the company through his spouse's employment and his retirement savings accounts.
89. Under the nature of the official action prong, the OCE found that none of the specific actions Rep. Kahele took on behalf of Hawaiian Airlines had a direct impact on Rep. Kahele's financial interest, but rather affected the airline industry broadly. Hawaiian Airlines flies out of airports in Rep. Kahele's district and therefore the interests align with the interests of his constituents.¹⁴⁸ Moreover, the OCE reviewed thousands of communications and interviewed witnesses who confirmed that Rep. Kahele's treatment of Hawaiian Airlines was consistent with legislative assistance provided to other entities.
90. Based on an analysis of the totality of the circumstances, the OCE did not find evidence that Rep. Kahele's interest in Hawaiian Airlines affected his treatment of the company's legislative priorities.

d. No Evidence of Actual Conflict of Interest

91. Under House Rule 23, Clause 3, a Member may have an actual conflict of interest if they have a direct pecuniary interest in the official action taken.
92. Witness 3, Rep. Kahele's Chief of Staff, discussed with the OCE the guidance Rep. Kahele received from the House Ethics Committee regarding his pecuniary interest in Hawaiian Airlines.¹⁴⁹ Notably, Rep. Kahele was advised that for there to be a conflict of interest "the piece of policy or legislation needed to be of personal pecuniary interest, so legislation would need to directly impact the Congressman's personal or financial standing in his external employment."¹⁵⁰

¹⁴⁵ See discussion *supra* Section III.A.

¹⁴⁶ In the Matter of Shelley Berkley at 46.

¹⁴⁷ In the Matter of Roger Williams at 12 - 16.

¹⁴⁸ Hawaiian Airlines, *Where We Fly*, <https://www.hawaiianairlines.com/destinations> (last visited August 16, 2022).

¹⁴⁹ Witness 3 Transcript (Exhibit 4 at 22-9485_0085-86).

¹⁵⁰ *Id.*

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93. Neither of the staffers interviewed, nor Rep. Kahele, believed there were any concerns with Rep. Kahele's employment with Hawaiian Airlines or membership with ALPA. The OCE staff did not find evidence that either Rep. Kahele or his staff made efforts to understand how Rep. Kahele would personally benefit from official actions taken on legislation or policy affecting Hawaiian Airlines or ALPA. In fact, after the December 2020 conversations with the Committee, Rep. Kahele did not make any additional efforts to communicate with the Committee when taking official action on legislation that may have impacted either organization.
94. However, to establish a potential violation of the rule, the OCE sought to determine whether any of the official acts Rep. Kahele took by co-sponsoring legislation, could potentially have a direct impact on his financial interest.
95. A review of the legislation at issue did not show an identifiable pecuniary interest for Rep. Kahele.¹⁵¹ While Rep. Kahele holds a financial interest in Hawaiian Airlines due to his employment status, the OCE staff did not find evidence of the at-issue legislation directly benefiting Rep. Kahele's personal financial interest under the current standard.

e. Rep. Kahele's Lack of Candor during the OCE's Review

96. During Rep. Kahele's interview with OCE staff, he made numerous misleading representations despite clear and contrasting evidence provided by his office, ALPA and Hawaiian Airlines. While Rep. Kahele was evasive in his interview, the evidence gathered from ALPA and Hawaiian Airlines did not establish a conflict of interest.
97. Based on the foregoing information, the Board finds that there is not substantial reason to believe that Rep. Kahele took official action that was motivated by, or that reasonable persons might view as motivated by his financial interest or dispensed special favors or privileges.

IV. CONCLUSION

98. Based on the foregoing information, the Board finds that there is substantial reason to believe that Rep. Kahele's campaign social media accounts may have posted videos and photos that were photographed or filmed from official House buildings, rooms, and offices, used official graphics and social media posts, shared official communications, or promoted official events.
99. Based on the foregoing information, the Board finds that there is not substantial reason to believe that Rep. Kahele may have taken official action on issues related to his employer that may affect his financial interests or dispensed special favors or privileges to this same entity.

¹⁵¹ The OCE identified six bills in which Hawaiian Airlines and ALPA lobbied congress. i. H.R. 3482 – National Center for the Advancement of Aviation Act of 2012, ii. H.R. 3095 – Fair and Open Skies Act, iii. H.R. 2770 – Healthy Flights Act of 2021, iv. H.R. 911 – Saracini Enhanced Aviation Safety Act of 2021 v. H.R.884 – National Aviation Preparedness Plan Act of 2021, vi. H.R. 3440 – Sustainable Skies Act.

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100. Accordingly, the Board recommends that the Committee further review the allegation that Rep. Kahele misused official resources for campaign or political purposes or used campaign funds to defray official expenses.
101. Accordingly, the Board recommends that the Committee dismiss the allegation that Rep. Kahele took official action that was motivated by, or that reasonable persons might view as motivated by his financial interest or dispensed special favors or privileges.

**V. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND
RECOMMENDATION FOR THE ISSUANCE OF SUBPOENAS**

102. By declining to provide requested information to the OCE and making misleading statements during his interview with OCE staff, Rep. Kahele did not cooperate with the OCE review.
103. The Board recommends that the Committee on Ethics issue a subpoena to Rep. Kahele.