



FEDERAL ELECTION COMMISSION
 Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mark Takai for Congress and Dylan Beesley in his)	
official capacity as treasurer)	MUR 7310
Dylan Beesley)	
Lanakila Strategies, LLC)	
)	

**STATEMENT OF REASONS OF
 COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

This matter arose from a complaint alleging that Mark Takai for Congress and Dylan Beesley in his official capacity (the “Committee”) converted campaign funds to personal use after the death of Congressman Mark Takai in July 2016, when the Committee continued to pay Beesley and his company, Lanakila Strategies LLC (“Lanakila”), a monthly consulting fee of \$5,759 through January 2018, well after Beesley and Lanakila had stopped doing significant amounts of work for the Committee.¹ On June 4, 2019, the Commission found reason to believe that the Committee, Beesley, in his personal capacity, and Lanakila violated 52 U.S.C. § 30114(b).² Subsequently, the Office of General Counsel (“OGC”) conducted an investigation to gather information about the payments the Committee made to Beesley and Lanakila and the services they performed. The results of this investigation, described below, affirmed the initial finding of reason to believe. Accordingly, OGC notified the Commission and Respondents of OGC’s intent to recommend that the Commission find probable cause to believe that the Committee, Beesley, and Lanakila had violated the Act.³ The Respondents submitted a Reply Brief⁴ and requested a probable cause hearing, which was held on May 10, 2022.⁵ Following

¹ Compl. ¶¶ 27-30 (Jan. 18, 2018).

² Certification, MUR 7310 (Mark Takai for Congress, *et al.*) (June 4, 2019); Factual and Legal Analysis (“F&LA”), MUR 7310 (Mark Takai for Congress) (“Committee F&LA”) at 11 (finding reason to believe that Committee violated 52 U.S.C. § 30114(b) by converting some portion of Committee payments to Lanakila from mid-2016 through December 2017 to personal use); F&LA at 10-11, MUR 7310 (Lanakila Strategies, LLC, *et al.*) (“Lanakila F&LA”) at 10-11 (same as to Beesley and Lanakila).

³ Gen. Counsel’s Brief (Mark Takai for Congress); Gen. Counsel’s Brief (Lanakila Strategies, LLC, *et al.*).

⁴ Reply Brief (April 25, 2022) (submitted jointly by the Committee, Beesley, and Lanakila).

⁵ Transcript of Proceedings, In the Matter of Mark Takai for Congress, *et al.*, May 10, 2022 (“Probable Cause Hearing Transcript”).

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that hearing, OGC recommended that the Commission find probable cause to believe that the Respondents had violated 52 U.S.C. § 30114(b) by converting a portion of the Lanakila's fees to personal use.⁶ We agreed with OGC's recommendation – in our view, the available information clearly demonstrates that the Committee's winding-down activities were largely complete by mid-March 2017 and that the majority of the Committee's payments to Beesley and Lanakila after that point constituted personal use because they did not reasonably result from campaign or officeholder-related activities.

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a contribution accepted by a candidate may not be converted to personal use.⁷ The Act and the Commission's regulations set out certain expenses that are per se personal use, while others are evaluated on a case-by-case basis to determine if funds have been used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."⁸ Under this analysis, the Commission may determine that all or only a portion of the relevant payments were converted to personal use.⁹ The Commission has stated that "[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use."¹⁰ The question before the Commission then is whether Beesley and Lanakila were engaging in campaign or officeholder activities at a level commensurate with the fees that Lanakila received.

The facts prior to March 2017 are not particularly noteworthy or unusual. The Committee hired Beesley as a fundraising consultant in 2015¹¹; over time, a series of contracts and contract amendments expanded the scope of his work and fees for that work.¹² From February 2016 until March 2017, Beesley and Lanakila performed a substantial amount of services including preparing call sheets; tracking calls, pledges, and contributions in the Committee's database; analyzing call time data; reviewing and maintaining the Committee's fundraising database; coordinating and participating in meetings of the Finance Committee;¹³ providing strategic and political consulting; branding, communications, and media affairs

⁶ Office of General Counsel's Notice to the Commission Following the Submission of Probable Cause Brief ("OGC Notice") (Mark Takai for Congress); OGC Notice (Dylan Beesley and Lanakila Strategies, LLC).

⁷ 52 U.S.C. § 30114(b).

⁸ *Id.*; 11 C.F.R. § 113.1(g).

⁹ The Commission's regulations anticipate that a disbursement may be only partially converted to personal use. *See, e.g.*, 11 C.F.R. § 113.1(g)(1)(ii)(C) ("If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use" unless timely reimbursed.); *see also* F&LA at 10, MUR 7292 (Clifford "Cliff" B. Stearns, *et al.*) (finding reason to believe that certain disbursements "may constitute impermissible personal use of campaign funds in whole or in part").

¹⁰ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995) ("Personal Use E&J").

¹¹ Respondents' Production of Documents to FEC (Aug. 15, 2019) ("Joint Production") at 00001 (Consulting Agreement dated May 27, 2015). All documents produced to the Commission in this matter were provided collectively by Beesley, Lanakila, and the Committee.

¹² *Id.* at 04022 (Consulting Agreement dated July 16, 2015); *id.* at 00019 (Consulting Agreement dated February 10, 2016).

¹³ *Id.* at 04022 (Consulting Agreement dated July 16, 2015).

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consulting; and designing and executing Takai’s 2016 campaign launch.¹⁴ Following Congressman Takai’s decision in May 2016 not to seek re-election due to a serious illness, Beesley’s and Lanakila’s responsibilities shifted, though they remained extensive – under an updated agreement, Lanakila continued to provide strategic and political consulting, and branding, communications, and media affairs consulting; in place of designing and executing the campaign launch, it was now responsible for “[o]versee[ing] the wind down” of the Committee.”¹⁵ The agreed upon fee for this work was \$5,759.16 per month. There is nothing to indicate that the contracts and contract amendments were anything other than arms-length transactions or that the negotiated fee was anything other than the fair market value for the volume and type of services performed.

The Committee’s wind down process progressed quickly and by March 2017, the Committee had all but completed winding down. It was at this point that the facts surrounding the Committee’s payments to Lanakila became noteworthy. Beesley had become the Committee’s treasurer in September 2016, at the request of Sami Takai.¹⁶ As treasurer, he had additional responsibilities, such as writing checks to pay vendors, including Lanakila. Yet the available facts show that in contrast to the extensive work that Beesley and Lanakila had performed while Congressman Takai was campaigning and during the wind down period, Beesley’s work after March 2017 consisted of exchanging occasional emails,¹⁷ writing a small number checks to the few remaining vendors (including Lanakila),¹⁸ and reviewing the quarterly disclosure reports that another vendor prepared (all of which contained minimal or no receipts and limited disbursements, mostly to Lanakila).¹⁹ And yet, despite this significant reduction in work, Beesley, as the Committee’s treasurer, continued to write checks to Lanakila in the amount of \$5,759.16 per month.²⁰

¹⁴ *Id.* at 00019 (Consulting Agreement dated February 10, 2016).

¹⁵ *Compare id.* at 00019 (Consulting Agreement dated February 10, 2016), *with id.* at 00026 (First Amendment to Consulting Agreement dated June 9, 2016).

¹⁶ Committee Resp. at 2 (Mar. 14, 2018); Joint Production at 02399 (Letter to Bank of Hawai’i describing Beesley’s appointment); Mark Takai for Congress, Amended Statement of Organization at 1 (Sept. 8, 2016), <https://docquery.fec.gov/pdf/784/201609089030751784/201609089030751784.pdf>.

¹⁷ *E.g.*, Joint Production at 03335 (April 2017 emails between Beesley and Murray).

¹⁸ Joint Production at 03424-26 (April 2017 checks to NGP Van, CFO Compliance, and Lanakila); *id.* at 03427-28 (May 2017 checks to CFO Compliance and Lanakila); *id.* at 03429-30 (June 2017 checks to CFO Compliance and Lanakila); *id.* at 03374-76 (July 2017 checks to CFO Compliance and Lanakila); *id.* at 03377-79 (August 2017 checks to CFO Compliance and Lanakila); *id.* at 03380-82 (September 2017 checks to CFO Compliance and Lanakila); *id.* at 03445 (October 2017 checks to CFO Compliance and Lanakila); *id.* at 03433-34 (November 2017 checks to CFO Compliance and Lanakila); *id.* at 03435-36 (December 2017 checks to CFO Compliance and Lanakila); Lanakila F&LA at 4.

¹⁹ Joint Production at 03337 (April 2017 emails regarding “Q1 FEC report”); *id.* at 03365 (July 2017 emails regarding “Q2 FEC report”); *id.* at 03383 (October 2017 emails regarding “Q3 FEC report”); *see* Mark Takai for Congress, April 2017 Quarterly Report (Apr. 5, 2017); Mark Takai for Congress, July 2017 Quarterly Report (July 15, 2017); Mark Takai for Congress, October 2017 Quarterly Report (Oct. 13, 2017). Beesley also performed a few one-time tasks, such as looking for someone to take leftover disposable phones, Joint Production at 03363 (May 2017 emails with Sami Takai), filing a notice with the State of Hawaii, *id.* at 03451 (form dated June 1, 2017, indicating that the Committee continued in operation but no longer had employees), and reopening the Committee’s NGP Van account on a limited basis after it was cut off, *id.* at 03392.

²⁰ *Supra* note 18.

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Notably, as Beesley progressed in winding down the Committee, he was quick to renegotiate payments to *other* vendors to reflect decreases in services. Beesley cut the monthly payment to CFO Compliance, the vendor responsible for preparing the Committee’s disclosure reports, from \$1,250 to \$500.²¹ The quarterly payment to NGP Van, a platform the Committee used to track some financial and compliance matters, was cut from \$3,000 to \$750.²² Beesley then requested to reopen the NGP Van account only one week per month, which further reduced the Committee’s payments to NGP Van to \$150 per month.²³ The last payroll payment to Paula MacCutcheon, a Committee employee whom Beesley supervised, was disbursed on October 14, 2016.²⁴ Yet, while payments to other vendors continued to decrease, reflecting that the work of winding down was coming to a close, the payments to Lanakila continued on, without change. Throughout this period, Beesley continued to bill the Committee and be paid Lanakila’s full monthly fee of \$5,759.16.²⁵

When the Committee and Beesley had renegotiated Lanakila’s contract following Congressman Takai’s withdrawal from the race, the updated contract had removed the set term of the agreement and instead had provided that it would continue until terminated by the Committee or Lanakila.²⁶ It could not have been anyone’s expectation that the contract would go on indefinitely. Following the death of Congressman Takai on July 20, 2016, however, Beesley became the Committee’s treasurer.²⁷ Thus, it fell to Beesley, *as both the Committee’s treasurer and Lanakila’s sole member*, to make any adjustments to the terms of the Committee’s contract with Lanakila – a contract of which he was now on both sides – including to reduce the fees paid to Lanakila and to terminate the contract. Notwithstanding Beesley’s dual roles, the Respondents argue that it was Sami Takai, Congressman Takai’s widow, who was responsible for approving payments to Lanakila.²⁸ The Respondents emphasize that Beesley submitted Lanakila’s invoices to Sami Takai before paying them.²⁹ However, in the more than 4,000 pages of documents that the Respondents turned over to the Commission there are no emails or other documents showing that Beesley submitted Lanakila invoices to Sami Taki for approval *after*

²¹ *Id.* at 03258-60; *see id.* at 02479 (showing CFO’s November and December 2016 invoices were each \$1,250).

²² *Id.* at 03955 (August 1, 2016, invoice to Committee showing quarterly fee of \$3,000) *id.* at 03999 (February 1, 2017, invoice to Committee showing new quarterly fee of \$750); *id.* at 02422-25 (emails among Edie Zornes of NGP Van, Beesley, and others discussing new pricing of \$250 per month).

²³ *Id.* at 03394-95 (December 2017 emails between Beesley and NGP Van showing request to reopen account one week per month); *id.* at 03784 (showing NGP Van billed Committee \$250 per month for May – October 2017); *id.* at 03785 (showing NGP Van billed Committee \$150 for a “1 week temporary reopen” in December 2017).

²⁴ Mark Takai for Congress, 2016 Year-End Report at 11 (Jan. 31, 2017), <https://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf#navpanes=0>.

²⁵ *Supra* note 18 (listing checks and invoices to Lanakila between April and December 2017); Committee F&LA at 4.

²⁶ *Compare* Joint Production at 00019, *with id.* at 00026. Beesley described this change in a memo to the Congressman and Sami Takai as allowing him to “help you through the end of your term, or until you decide it’s time to end the contract.” *See id.* at 00590 (memo from Beesley to Congressman and Sami Takai dated June 18, 2016).

²⁷ *Supra* note 16.

²⁸ *See, e.g.*, Reply Brief at 5; Probable Cause Hearing Transcript at 8-9, 13, 35.

²⁹ *See, e.g.*, Probable Cause Hearing Transcript at 43 and 44.

May 2017.³⁰ From that point on – from June 2017 through December 2017 – it appears that Beesley wrote checks for \$5,759 to Lanakila without any oversight.

During the final month for which Lanakila received its usual fee of \$5,759.16 – January 2018 – the available information reflects that Beesley’s work on behalf of the Committee consisted of a phone call,³¹ preparing a letter and check for a single outstanding refund from the Committee’s account,³² and paying the CFO Compliance bill.³³

The key question is whether Beesley was *actually doing* the amount of work for which he was billing the Committee. As the Respondents note³⁴, flat-rate contracts are not inherently suspect; there is nothing in the record to suggest that the Committee was paying Beesley and Lanakila less than a fair market rate for his work between February 2016 and the functional end of the wind down period in March 2017, notwithstanding fluctuations in workload from month to month. But by March 2017, the voluminous record turned over to the Commission by the Respondents shows that Beesley’s workload had dwindled to a trickle, and it remained as such for the next 10 months.³⁵ This was not a mere fluctuation. Given that the Committee apparently planned to terminate, this was instead a long-term, if not permanent, reduction in the average amount of services performed.³⁶ Yet Beesley did not suggest reducing Lanakila’s fees to reflect this decrease in work; instead, he continued writing checks to Lanakila for \$5,759 a month.

But there was work outstanding. As the Respondents describe it, the “sole, practical hurdle to the campaign’s termination was the Takai family’s establishment of a charitable foundation to receive its surplus funds.”³⁷ The Reply Brief goes on to note, however, that “[t]he General Counsel’s Brief is clear that neither Beesley nor Lanakila was involved in that process.”³⁸ Documents produced by the Committee, as well as notes from a December 2016 meeting between Beesley and Sami Takai corroborate this, demonstrating that Gary Kai, Sami Takai’s father, was setting up the organization.³⁹ In May 2017, Kai, Beesley, and Sami Takai exchanged several emails concerning whether campaign funds could be “deposited in an account for an entity that will be seeking approval as a 501c3?”⁴⁰ After that exchange, the documents produced by the Committee do not show any further involvement by Beesley or Lanakila in establishing the 501(c)(3) organization. Yet, despite not being involved in the only remaining project – setting up the charity – Beesley continued to pay himself \$5,759.16 per month.

³⁰ Joint Production at 003357-8.

³¹ *Id.* at 03401 (apparently to discuss the Complaint in this matter).

³² *Id.* at 03461.

³³ *Id.* at 03437.

³⁴ See Probable Cause Hearing Transcript at 8, 10-11, 47.

³⁵ *Supra* notes 17, 18, and 19.

³⁶ *Id.* at 03332 (email from vendor to Beesley stating that she recalled him “mentioning that the goal was to close out by the end of March [2017]” and asking whether they were “still on track for that”).

³⁷ Reply Br. at 6.

³⁸ *Id.*

³⁹ Joint Production at 03953; Committee Resp. at 1 n.1 (explaining relationship between Sami Takai and Gary Kai).

⁴⁰ Joint Production at 03359.

We do not know how long Beesley would have continued paying himself \$5,759.16 a month while waiting for Congressman Takai’s family to set up a charity, a task that Beesley himself noted that “[Sami] doesn’t seem to be in a hurry” to complete.⁴¹ But on January 12, 2018, the *Honolulu Star Advertiser* reported that two days prior, the paper had contacted Beesley to comment on the Committee’s continued payments to Lanakila 18 months after Congressman Takai’s death.⁴² Beesley is quoted as stating that, following the Congressman’s death, “the campaign continues to have surplus funds and filing obligations with the Federal Election Commission” and that it “needs some personnel to continue to manage its affairs and meet these and other obligations until it finally disposes of its funds and terminates its registration.”⁴³

Following the paper’s contact with Beesley, several things happened. The next day, January 11, 2018, the K. Mark Takai Foundation registered as a nonprofit corporation with the State of Hawaii.⁴⁴ On January 24, 2018, the Committee amended its Statement of Organization to designate Gary Kai as its Deputy Treasurer.⁴⁵ And, it appears that Beesley stopped billing the Committee the full amount: the available records show that he billed the Committee only \$750 for each of the months of February and March 2018.⁴⁶

In March 2018, following the *Honolulu Star Advertiser*’s reporting, Beesley and Gary Kai exchanged emails in which they renegotiated Lanakila’s monthly fee from \$5,759.16 to \$750. The initial portion of the email is redacted. In response to this redacted communication, Kai asked, “What would you consider a reasonable amount of compensation-the lower the better for obvious reasons,” to which Beesley initially responded, “I thought a little less than half of my current \$5759.”⁴⁷ Beesley indicated that he had prepared a document setting the fee at \$2,500 per month, which appears to refer to a draft contract extension that amends the fee but does not adjust Lanakila’s duties to the Committee or the unlimited term of the contract.⁴⁸ Kai replied that “I am not sure that I could recommend that to Sami [Takai]” and asked how many hours per week Beesley was working for the Committee.⁴⁹ Beesley did not answer that question. Instead, Beesley stated that while he preferred “not to take anything” the “FEC says the campaign has to pay me at fair market value,” and then proposed \$750 a month.⁵⁰ Following this exchange, the

⁴¹ *Id.* at 03332.

⁴² Nanea Kalani, *Payments by Takai’s Campaign Questioned*, HONOLULU STAR ADVERTISER, Jan. 12, 2018 (stating that Beesley was “[r]eached for comment by phone Wednesday,” which would have been January 10, 2018).

⁴³ *Id.*

⁴⁴ Hawaii Business Express, *K. Mark Takai Foundation*, <https://hbe.hawaii.gov/documents/business.html?fileNumber=287547D2&view=info> (last visited Apr. 7, 2022). The foundation was later granted federal tax-exempt status under Internal Revenue Code Section 501(c)(3), with an effective date of January 11, 2018. Determination Letter from Internal Revenue Service to K. Mark Takai Foundation (Mar. 27, 2018), <https://apps.irs.gov/app/eos/detailsPage?ein=824524922&name=K%20Mark%20Takai%20Foundation&city=Honolulu&state=HI&countryAbbr=US&dba=&type=CHARITIES,%20DETERMINATIONLETTERS,%20COPYOFRETURNS&orgTags=CHARITIES&orgTags=DETERMINATIONLETTERS&orgTags=COPYOFRETURNS> (last visited Apr. 7, 2022).

⁴⁵ Mark Takai for Congress, Amended Statement of Organization at 4 (Jan. 24, 2018), <https://docquery.fec.gov/pdf/176/201801249090602176/201801249090602176.pdf>.

⁴⁶ Joint Production at 03440.

⁴⁷ Supp. Production at 004086.

⁴⁸ *Id.*; *see id.* at 004088-89 (proposed Second Amendment to Consulting Agreement).

⁴⁹ *See id.* at 004085-86.

⁵⁰ *Id.* at 004085.

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Committee paid Lanakila \$750 for one additional month before ceasing payments to it.⁵¹ The Committee reported disbursing \$250,000 to the K. Mark Takai Foundation on April 27, 2018, leaving it with approximately \$36,000 cash on hand.⁵²

In total, between March 2017 and December 2017, Beesley, as the Committee's treasurer, paid Beesley, as Lanakila's sole member, roughly \$57,590.⁵³ Based upon Beesley's own valuation of his services at \$750 per month, Lanakila received \$50,091.60 that did not result from campaign or officeholder activities.

Throughout the investigation, Respondents have had ample time to demonstrate the amount of work that Beesley did during these 10 months. They have not done so. What services was Dylan Beesley performing for the Committee between March 2017 and December 2017? As noted above, Beesley and Lanakila were not significantly involved in the registration of the Takai family's charitable organization. Beesley did not explain in his email exchange with Kai what change in his workload accounted for the decrease in value for Beesley's services from \$5,759 in December 2017 to \$750 in March 2018. He did not respond to a direct question from Kai about how many hours per week Beesley was working for the Committee and the Respondents did not provide an answer to this question during the proceedings. Nor have the Respondents explained what work Beesley was doing in December 2017 that he was not doing in January 2018 that would explain the drastic decrease in his fees.

This matter does not turn on a complex or novel question of law.⁵⁴ This matter turns on a few simple facts: between February 2016 and March 2017, Beesley and Lanakila performed an extensive amount of work for the Committee, for which Lanakila was paid \$5,759 per month, presumably a fair market rate for this volume of work. Following March 2017, Beesley and Lanakila performed only minimal tasks for the Committee, yet Beesley, as treasurer, continued to write checks to Lanakila for \$5,759 per month; after May 2017, Beesley did not submit invoices to Sami Takai for approval prior to writing these checks. In January 2018, a news outlet published a story questioning the Committee's continued payments to Beesley and Lanakila. Following that reporting, Beesley stopped invoicing the Committee for the full amount and in emails with Gary Kai, the Committee's newly named deputy treasurer, stated that "the FEC says the campaign has to pay me at fair market value" and described that figure as \$750 a month.

Despite the record, several of our colleagues voted to find no probable cause to believe that the Committee, Beesley, and Lanakila violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.⁵⁵ However, given the abundance of information demonstrating that Beesley, as treasurer, with minimal oversight, continued to pay himself long after his work for the Committee had dwindled, we did not join them.

⁵¹ Joint Production at 03440 (February and March 2018); *id.* at 03781 (April 2018).

⁵² Mark Takai for Congress, July 2018 Quarterly Report at 2, 8 (July 15, 2018), <https://docquery.fec.gov/pdf/694/201807159115687694/201807159115687694.pdf>.


⁵³ Lanakila F&LA at 4.

⁵⁴ See Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III, MUR 7310 (July 5, 2022) (arguing that this matter would "require [the Commission] to establish – in an enforcement matter – a rule for the use of campaign funds to wind down a campaign.").


⁵⁵ Certification, MUR 7310 (Mark Takai for Congress, *et al.*) (May 26, 2022).

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July 6, 2022
Date


Shana M. Broussard
Commissioner

July 6, 2022
Date


Ellen L. Weintraub
Commissioner