

TRANSCRIPT OF PROCEEDINGS

In The Matter Of:)
)
MARK TAKAI FOR CONGRESS,) MUR 7310
ET AL.,)
)
Respondents.)

Pages: 1 through 53
Place: Washington, D.C.
Date: May 10, 2022

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BEFORE THE FEDERAL ELECTION COMMISSIONER

In The Matter Of:)
)
 MARK TAKAI FOR CONGRESS,) MUR 7310
 ET AL.,)
)
 Respondents.)

Remote Hearing
 Heritage Reporting Corporation
 1220 L Street, N.W., Suite 206
 Washington, D.C.

Tuesday,
 May 10, 2022

The parties convened, pursuant to notice, at
 10:07 a.m.

APPEARANCES:

Commissioners:

CHAIR ALLEN DICKERSON
 VICE CHAIR STEVEN T. WALTHER
 COMMISSIONER SHANA M. BROUSSARD
 COMMISSIONER SEAN J. COOKSEY
 COMMISSIONER JAMES E. "TREY" TRAINOR, III
 COMMISSIONER ELLEN L. WEINTRAUB

On Behalf of Respondent Mark Takai for Congress:

BRIAN SVOBODA
 Perkins Coie LLP

On Behalf of Respondents Dylan Beesley and Lanakila Strategies, LLC:

WILLIAM PITTARD
 KaiserDillon PLLC

On Behalf of the Commission's Office of General Counsel:

LISA STEVENSON
 Acting General Counsel, FEC

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APPEARANCES: (Cont'd.)

Other Appearances from the Office of General Counsel:

CHARLES KITCHER
Associate General Counsel for Enforcement

CLAUDIO J. PAVIA
Deputy Associate General Counsel

MARK ALLEN
Assistance General Counsel

LAURA CONLEY
Attorney

DWAYNE PUGH
Director of Congressional Affairs

1 P R O C E E D I N G S

2 (10:07 a.m.)

3 MS. SINRAM: Good morning. I am Laura
4 Sinram. I'll be the moderator for the hearing, and
5 Vickie Allen will be the recording secretary.

6 I'll be covering a few ground rules prior to
7 the start of the hearing. This is an official on-the-
8 record hybrid Commission hearing.

9 Commissioners, the recording secretary, the
10 moderator, the General Counsel, the staff director,
11 OGC staff assigned to the case, and counsel for the
12 Respondent, if participating virtually, must keep
13 their video on at all times unless they are
14 participating by telephone dial-up. Other virtual
15 participants should turn on their video for the
16 duration of their participation.

17 If you are participating via phone, you may
18 use star 6 to mute and unmute. Only the Commission
19 Secretary's office and the court reporter may record
20 the hearing.

21 If you are participating from your
22 residence, please make sure that you are in a room in
23 which you are the only person with the door closed and
24 that the volume is set at the lowest level at which
25 you can hear the call clearly, but the persons outside

1 the room cannot hear the call.

2 To minimize cross-talk, please adhere to
3 strict parliamentary procedure on recognition by
4 speaking the words "Mr. Chairman" and then waiting for
5 the Chairman to recognize you by name.

6 If you are having trouble hearing what is
7 being said, for example, because someone is talking
8 too quietly, please make sure that your device's
9 volume is turned up.

10 If you are a Commissioner, the acting
11 general counsel, the staff director, a presenter,
12 counsel for the Respondent, the recording secretary,
13 or the moderator, please use the parliamentary
14 procedure that I just spoke of to seek recognition
15 from the Chair, and when recognized, ask the speaker
16 to speak louder or get closer to their microphone.

17 Mr. Chairman, I can confirm that all six
18 Commissioners and counsel for the Respondent and the
19 court reporter are present. Are you ready to begin
20 recording?

21 CHAIR DICKERSON: Yes, thank you.

22 MS. SINRAM: Mr. Chairman, we are recording,
23 and you may gavel in the hearing when ready.

24 CHAIR DICKERSON: Thank you.

25 Good morning. The probable cause hearing

1 for Matter Under Review 7310, Mark Takai for Congress,
2 et al., will now come to order. I'm especially
3 pleased to welcome counsel to our hearing room for the
4 first time in several months. Welcome, gentlemen.

5 Representing Respondent Mark Takai for
6 Congress is Brian Svoboda of Perkins Coie LLP, and
7 representing Respondents Dylan Beesley and Lanakila
8 Strategies, LLC, is William Pittard of KaiserDillon
9 PLLC.

10 In addition to the Commissioners, present
11 today we have from the Office of General Counsel
12 Acting General Counsel Lisa Stevenson, along with
13 Charles Kitcher, Claudio Pavia, Laura Conley, and Mark
14 Allen. Director of Congressional Affairs Dwayne Pugh
15 is also present.

16 On April 8, 2022, the Office of General
17 Counsel sent its probable cause brief to counsel for
18 the Respondents notifying them that OGC is prepared to
19 recommend that the Commission find probable cause to
20 believe that both Mark Takai for Congress and Dylan
21 Beesley in his official capacity as Treasurer and
22 Lanakila Strategies, LLC, and Dylan Beesley in his
23 personal capacity violated 52 U.S.C. § 30114(b).

24 On April 25, 2022, the Respondents filed
25 their reply brief and notified OGC that the

1 Respondents were requesting a probable cause hearing.
2 On April 26 of this year, the Commission granted that
3 request and promptly scheduled today's hearing.

4 Mr. Svoboda and Mr. Pittard, for today's
5 hearing, as you were advised by OGC, we will follow
6 the procedures set forth in the Commission's policy
7 statement on probable cause hearings. You will be
8 allowed 15 minutes to make an opening statement, and
9 you will have five minutes to make a closing
10 statement.

11 Your opening statement should only present
12 issues, arguments, and evidence that you have already
13 briefed or brought to the attention of the Office of
14 General Counsel. You may reserve time for a closing
15 statement if you desire, as I just noted.

16 Following your presentation, the
17 Commissioners, the General Counsel, and the staff
18 director will have the opportunity to ask questions.
19 Our probable cause hearing procedure also permits
20 Commissioners to ask clarifying questions of the
21 General Counsel and the staff director. But I'd like
22 to remind everyone that only Commissioners and not
23 Respondents' counsel may direct questions to the
24 General Counsel and the staff director.

25 The Commission will make a transcript of

1 this hearing available to Respondents, which will
2 become part of the record.

3 Welcome again, gentlemen.

4 MR. PITTARD: Thank you.

5 CHAIR DICKERSON: Proceed with your opening.

6 MR. PITTARD: Great.

7 CHAIR DICKERSON: Mr. Pittard.

8 MR. PITTARD: Good morning. Again, I'm Bill
9 Pittard on behalf of Dylan Beesley and Lanakila
10 Strategies, which was a company that he was and is the
11 principal of.

12 I'm going to start by talking about the
13 facts underlying this matter, and then Mr. Svoboda
14 will particularly address the law and policy
15 implications. And I'd like on behalf of my clients to
16 reserve just a minute at the end for closing, please.

17 I'd like to start by emphasizing five
18 factual points that I think the Commissioners should
19 bear particularly in mind in this matter.

20 First, the payments that were made were
21 entirely pursuant to an arm's length written contract.
22 Dylan Beesley on behalf of Lanakila negotiated that on
23 the vendor side, and on the campaign side, the
24 Congressman himself negotiated it for the campaign.
25 We've got a arm's length written contract.

1 Second, what kind of contract is it? It was
2 a flat fee monthly contract, and that's important here
3 because the whole nature of a flat fee contract, of
4 course, is that a certain amount is paid each month.
5 The work, however, can vary and often does.

6 As the Commissioners know, flat fee
7 contracts are common in the election space. They were
8 used here, and, here, the parties knew full well that
9 the work would be quite heavy in the beginning and
10 then it would taper over time. That was the
11 expectation. So no one should be surprised if the
12 facts bear that out. That's second, the type of
13 contract.

14 Three, the payments here to Lanakila or
15 Dylan never varied from the contract, never. Dylan
16 himself never got any money directly. All the
17 payments at issue went to Lanakila, the company, and
18 those payments were strictly in accordance with the
19 contract.

20 Four, Dylan did not approve any of the
21 payments himself. He was not responsible for
22 approving the payments to Lanakila. That's an
23 important point that the recommendation recognizes
24 pages 8 to 9 of the brief. Rather, it was Sami Takai,
25 the widow of the Congressman, who had been active in

1 the campaign throughout. She was the one who was
2 responsible for approving payments to vendors,
3 including Lanakila.

4 So, even though Dylan eventually, as you'll
5 hear as I talk about the facts more, even though he
6 did take on the Treasurer role, so he did move from
7 just the vendor side, also having a role with the
8 campaign directly at some point, it remained Sami
9 Takai, not Dylan, who was responsible for approving
10 the payment to Lanakila.

11 And, fifth, finally, Dylan Beesley hastened
12 the wind-down here. He hastened the wind-down. The
13 recommendation here does not allege, nor could it,
14 that he did anything to delay things, that he
15 prolonged the wind-down, he tried to make it go slow.
16 Never alleges that because that's not what happened at
17 all.

18 In fact, the recommendation recognizes that
19 Dylan proactively bothered Sami Takai, the widow, the
20 grieving widow of the Congressman, to push her gently
21 but to push her to please get that foundation set up.
22 Everybody recognized what was happening here was that
23 the remaining monies in the campaign would be
24 transferred to this particular charitable foundation,
25 and that's what we were waiting on at some point, and

1 he was pushing her to do that.

2 Those five -- I'll talk in more detail now,
3 but those five facts, I think, are crucial to make
4 sure the Commissioners understand and, in light of
5 that, to think about, like, this is not a case where
6 anybody did anything wrong.

7 Let me talk in a little bit more detail.
8 First, as I said, Dylan was the principal of Lanakila,
9 they negotiated an arm's length contract, they do it
10 directly with the Congressman himself. That contract
11 is set to pay a monthly fee. It's \$5500 plus taxes in
12 the time leading up to when the Congressman eventually
13 gets sick and withdraws, \$5500 plus taxes.

14 They know that the amount of work will vary.
15 Nobody is going to be surprised by that. That's the
16 way it had been set up. And the Commission has never
17 questioned whether a flat fee arrangement is
18 inappropriate in some ways as a general matter, right?

19 Like, this idea that the work can vary,
20 sometimes it can be quite heavy relative to what
21 you're getting paid. Sometimes it can be light
22 compared to what you're getting paid, right? The
23 Commission has never thought that, oh, that's, you
24 know, basically an untoward gift to a campaign or
25 that's a personal use. But that type of structure is

1 totally appropriate.

2 Eventually, as the Commissioners know, the
3 Congressman here got sick, and he withdrew in June of
4 2016, he officially withdrew from the race. At that
5 point, the Congressman approached Dylan, and he asked
6 Dylan to stay on and now convert his work to the wind-
7 down.

8 Dylan, of course, agreed to do it. Did he
9 particularly want to do it? Is it the sort of work
10 that's fun and exciting like working for a rising
11 member of Congress? No, right, but he had a sense of
12 loyalty, he agreed to do it. They negotiated. They
13 agreed that they would retain the flat fee
14 arrangement, and now Dylan's work would include the
15 wind-down responsibilities.

16 And, here, it's not just now that they're
17 negotiating for a flat fee arrangement where the work
18 is expected to go up and down as it often does in an
19 election cycle. Here, both sides knew full well when
20 they negotiated that contract that the work was going
21 to look like this. It was going to be quite heavy,
22 and then it was going to taper off because that's what
23 a wind-down is, and they negotiated for a \$5500 a
24 month plus tax rate for the duration of the wind-down.
25 The market set the rate.

1 The work turned out to go as expected. It
2 was crushingly heavy, as the brief that the Commission
3 puts in. Now the recommendation acknowledges Dylan
4 and Lanakila are doing a tremendous amount of work,
5 and, again, later it did taper off just as expected.

6 One note here. The Treasurer for the
7 campaign, a man named Edward Dion Kaimihana, he was
8 the Treasurer of the campaign at the time that Dylan
9 on behalf of Lanakila began to serve in this role, in
10 this wind-down vendor role. That Treasurer left the
11 campaign at some point during the wind-down process,
12 as he was entitled to do, right, he's free to leave.

13 But the reason I raise it -- and that's --
14 and then Dylan becomes the Treasurer when Sami Takai
15 asks him will you please take on this additional
16 responsibility. Dylan agrees to do it, and he agrees
17 to do it for no extra money. So he's now doing more
18 work than actually originally expected.

19 But the reason I raise it is because this is
20 exactly why the Congressman had negotiated this
21 contract with Lanakila, right, to lock them into
22 serving in this role to do the wind-down, to make it
23 harder for him just to walk away when things, frankly,
24 get less fun and you're just doing the drudgery of a
25 wind-down, right. And that's not to criticize the

1 Treasurer who left. Again, he was perfectly entitled
2 to do it, right, but this shows why this kind of
3 arrangement and negotiating something that would keep
4 Lanakila around to actually do the work was important.

5 Okay. Going back to one of my summary
6 points at the beginning, and it's very important,
7 Dylan has not -- even after he performs as Treasurer,
8 now he's got a role in the official campaign -- even
9 after he becomes the Treasurer, he is not the one
10 responsible for approving payments to vendors, and
11 he's particularly not the one responsible for
12 approving payments to Lanakila. It's not Dylan.
13 And the recommendation recognizes that. It's Sami
14 Takai. At pages 8 and 9 of the recommendation, it
15 says that Sami Takai, not Dylan, not Lanakila, Sami
16 Takai "was responsible for authorizing payment on
17 invoices from vendors, including Lanakila."

18 Was there less work over time? Yes,
19 absolutely, right. We've never hidden that fact.
20 Yes, there was. There was some continuing work to be
21 sure, but there was less, and that's exactly what the
22 parties had anticipated when they negotiated this
23 thing up front. Did Dylan ever do anything to delay
24 the wind-down? Never, not a single thing.

25 Did Dylan, in fact, continue to push to get

1 this done? Yes. He bothered Sami. Sami Takai, whose
2 husband had died at the age of 40-something, right,
3 quite young to die, she's grieving, she has young
4 kids, and so Dylan is gentle with her, as he should
5 be, but he pushes her, saying, hey, you all were going
6 to set up that foundation -- money. How is that
7 going? Are you getting that done? He's pushing.
8 And, again, the recommendation recognizes she knew
9 exactly what they were supposed to do.

10 Dylan never did anything stupid the whole
11 time through this. Never anything untoward. Never
12 hiding anything. Never putting his hand in the cookie
13 jar. The payments to Lanakila never differed from
14 what the contract provided. Again, it's Sami Takai
15 who is responsible, not Dylan.

16 Dylan Beesley pushes at the beginning of the
17 wind-down process to bring in outside counsel to make
18 sure it's done right, and Brian couldn't say this in
19 the brief he filed because his name is on it, but who
20 did he bring in? He brings in, like, one of the best
21 firms in the country in this, right? He brings in
22 Perkins Coie and gets them to do it. He wants to do
23 it right. Nothing that I have said is disputed. This
24 is all undisputed fact.

25 I've gone one more sort of set of facts that

1 I think are important for the Commission to know, and
2 that is that Dylan Beesley and Lanakila have not been
3 paid a dime. Dylan Beesley has never been paid --
4 Lanakila has not been paid a dime since April 2018, in
5 over four years. They continued to do the work to
6 make sure that the FEC filings get filed, to deal with
7 media inquiries, to deal with all the FEC inquiries
8 here, information and document requests, whatever
9 comes up, has not been paid since April of 2018.

10 I think the recommendation recognizes that
11 the value, the fair market value of Lanakila Services
12 during that period of time was \$750 a month because
13 they make a point of saying, well, look, in March of
14 2018, this is at the point where the family has now
15 created the foundation and the money is just about to
16 be sent.

17 And so Dylan, on behalf of Lanakila, has a
18 conversation with Gary Kai, who's been brought in as
19 the Deputy Treasurer, he's acting on behalf of the
20 campaign, they have a conversation, a negotiation.
21 They say, look, we've made it to this point, which is
22 the end of the anticipated work to wind down this. It
23 took however long it took, right.

24 So now the family has set up a foundation
25 and the money is about to go over. We've made it to

1 the end of what we thought was going to be the work,
2 but now there's an investigation by the FEC, so it
3 looks like they're going to have to stay open for some
4 period, a traditional period of time. The work is
5 going to be different.

6 They negotiate, okay, why don't we do 750 a
7 month going forward, and the recommendation doesn't
8 dispute that that's an appropriate amount going
9 forward. What the recommendation gets very wrong,
10 respectfully, is they say, oh, that 750 that they
11 negotiated that clearly was a going forward rate, now
12 that we're in a totally different phase, they say that
13 number should have been the amount paid for the last
14 10 months, or late 2017 through January 2018, and
15 that's wrong.

16 This clearly was a negotiation about what's
17 a fair price going forward, nothing about what the
18 fair price was going backward. I don't even know what
19 the fair price was going backward. When you look at
20 the arm's length negotiated contract, it was \$5500 a
21 month plus taxes. That's what the market said. That
22 was the appropriate amount for that.

23 I will end my fact issues just by
24 underlining that Dylan and Lanakila did absolutely
25 nothing wrong. Never was -- never were anything --

1 it's an arm's length negotiated contract, a written
2 contract paid exactly to the dime according to it.
3 Was there less work? Yeah, at some point, there is,
4 just as the parties expected would be usual.

5 Was he the one, was he, like, signing his
6 own checks? He was going to Sami Takai, as they
7 recognized, who was the one responsible for that, and
8 she was approving it.

9 Was he doing anything to delay things? No.
10 Was he, in fact, pushing to hurry up the wind-down?
11 Yes. I think that's the undisputed facts here. So,
12 on that record, it certainly doesn't require action
13 against Dylan Beesley or Lanakila --

14 (Technical interference.)

15 MR. SVOBODA: Thank you, Mr. Chairman. I
16 want to be respectful of the Commission's time. How
17 much time do I have?

18 CHAIR DICKERSON: Madam Secretary?

19 MS. SINRAM: Mr. Chairman, I'm sorry, I
20 don't -- we are 19 minutes in at this point.

21 CHAIR DICKERSON: You have 15 minutes, sir.

22 MR. SVOBODA: Thank you, Mr. Chairman. I'll
23 try to be brief so that everybody has an opportunity
24 to talk fully.

25 Mr. Pittard's explained why there's no

1 factual basis for the recommendation in this matter.
2 I want to talk just very briefly about why we contend
3 there's no legal basis for the recommendation in this
4 matter, and we see three defects with the
5 recommendation.

6 The first is the statute itself, that the
7 recommendation is at odds with the text, the purpose,
8 and history of the statute.

9 The second is the methodology that's used to
10 get around these problems with the statute, the use of
11 an advisory opinion as a sword rather than as a
12 shield, the retroactive application of rules that the
13 Commission has been asked to write but has yet to
14 write.

15 And the third are the policy consequences of
16 this recommendation if adopted, which we would submit
17 would actually encourage and promote the corruption
18 that the personal use standard is meant to thwart
19 rather than deter it.

20 So let me talk about each of these in turn.
21 First, the statute. It's easily overlooked because we
22 talk about the personal use ban, the personal use
23 prohibition. That's the framework we all use as
24 practitioners and regulators. But, if you look at the
25 text of 30114(a), it's written permissibly. It

1 provides that a campaign may use campaign funds for
2 otherwise authorized expenses in connection with a
3 campaign for federal office or for any lawful purpose.
4 It grafts onto this permission a particular
5 restriction, which is that campaign funds may not be
6 used to fulfill any obligation that would exist
7 irrespective of the candidate's campaign.

8 And that's very significant here in a matter
9 where we are talking about 10 payments, each of which
10 was made pursuant to a contract that the candidate
11 entered into on behalf of the campaign to provide for
12 the wind-down of the campaign.

13 As a textual matter, you cannot say that the
14 10 payments at issue in this matter were used to
15 fulfill an obligation that would exist irrespective of
16 the candidate's campaign. They were used to meet a
17 contractual obligation that arose directly from the
18 campaign, and that is the core textual problem against
19 which the recommendation is, like a boat hitting a
20 rock in the sea.

21 And then, when you look at the statute and
22 how the Commission has interpreted the statute over
23 more than 30 years, you see how, again, the
24 recommendation is lacking. You have had the
25 Commission historically say for more than 30 years

1 that candidates have wide discretion over the use of
2 their campaign funds. They said it most significantly
3 in the 1995 explanation and justification that set
4 forth the personal use rules. That language was
5 derived from the advisory opinion in 1990-24 that was
6 given to Mr. Cortesi, who wanted to hire his wife to
7 serve as an employee on the campaign. It's been
8 emphasized by the Commission since.

9 In that same explanation and justification,
10 the Commission said quite clearly and quite
11 purposefully that if a campaign could reasonably show
12 that an expense arose from campaign or officeholder
13 activities, that the Commission would not find
14 personal use, that the Commission would not find
15 personal use.

16 In the particular instance of staff and
17 vendor support, the Commission has made repeatedly
18 clear that campaigns have wide discretion to decide
19 whom they're going to hire or what duration they are
20 going to hire them and how much they are going to pay
21 them.

22 So, for example, in the Eric Massa MUR, MUR
23 6275, the Commission said that campaigns have latitude
24 to retain services and compensate staff within
25 commercially reasonable balance. In the Cortesi

1 advisory opinion from 1992, the Commission said that
2 this wide discretion that the rules provide allows
3 campaigns to choose personnel they wish to employ. So
4 these are principles that the Commission has generally
5 enforced over the period of 30 years that gives
6 campaigns wide discretion.

7 Now these permissions are not interminable;
8 they are not infinite. The Commission in particular
9 regulations have placed boundaries on them in
10 particular circumstances. One of those is in the case
11 of family members, so there is a specific regulation.
12 The regulation is 113.1(g)(1)(i)(H), which provides
13 that in the case of a salary payment made to a family
14 member, we will ask whether the services are bonafide
15 and we will ask whether the payment represents fair
16 market value.

17 But we imply those situations in that
18 particular case because, in the case of a family
19 member, the Commission views it as appropriate to
20 narrow that discretion that the campaign otherwise
21 has, realize that the personal use standard exists for
22 an anti-corruption purpose. It springs from Senate
23 ethics rules. The investigation of Thomas Dodd back
24 in the mid-1960s, when people were making donations to
25 his campaign that he was using to pay for personal

1 expenses, and it was a way fundamentally to enrich the
2 officeholder and skew the officeholder's public
3 behavior.

4 So payments to the candidate present that
5 sort of risk. Payments to the candidate's family
6 present that sort of risk. That risk is not present
7 in the context of payments to third parties, which is
8 why in that specific regulation, 113.1(g)(1)(i)(H),
9 you have a special rule for family members asking is
10 the compensation bonafide or are the services bonafide
11 and does the compensation exceed fair market value.

12 So you have a statute that is designed
13 to -- you have a statute that presents these rules
14 that fundamentally are designed to give campaigns
15 discretion and freedom to be limited in particular
16 circumstances where the risk of corruption is feared.

17 So how does the recommendation try to get
18 around what we think is this clear textual problem,
19 that these 10 payments arose from an obligation that
20 existed entirely because of the campaign? They use
21 two legerdemain that the Commission frankly has seen
22 before. The first is the use of an advisory opinion
23 as a sword rather than as a shield.

24 So the principal authority in the General
25 Counsel's brief is Advisory Opinion 2013-5, the Elton

1 Gallegly advisory opinion. Let me give you quickly
2 the background on that.

3 There is a provision of 30114, current
4 30114, that allows the use of campaign funds to defray
5 ordinary and necessary expenses in connection with the
6 duties of a federal officer. Elton Gallegly was a
7 federal officer. He retired from the House of
8 Representatives. He had a bunch of official papers.
9 He wanted to store them, but he had already retired
10 from Congress more than six months previously.

11 There was a regulation that is specifically
12 for the wind-down of an official office that provided
13 that campaign funds could be used to wind down the
14 office of a federal officer for six months after he
15 leaves office.

16 So Mr. Gallegly wisely comes to the
17 Commission and asks for permission. The Commission
18 grants him permission, relying on the explanation and
19 justification that said that the six-month time
20 horizon for winding down the federal office was a safe
21 harbor, not a hard-and-fast rule, and it gave him
22 permission to do it.

23 The problem for all of us here today is Mr.
24 Gallegly said, oh, by the way, I have some campaign
25 records too, can I store those too? And the

1 Commission said yes, you may store those too. And the
2 Commission was not completely clear as to why he would
3 store them.

4 And so, from that advisory opinion, the
5 Office of General Counsel has devised a rule, a rule
6 by which campaigns are presumed to have six months to
7 wind up their activities, and after that six-month
8 period, their wind-down activities are inherently
9 suspect. That is why we're here today.

10 And we know from the Dole-Kemp audit in 1996
11 that the Commission cannot use an advisory opinion
12 like the Gallegly advisory opinion as the source of a
13 new rule. The Commission can only use it to protect
14 the requestor in that particular case, and yet that
15 advisory opinion is being used as a sword today
16 against Dylan Beesley, against Lanakila Strategies,
17 against Mark Takai for Congress, and that's a problem.

18 The second problem with the -- the second
19 legerdemain that's being used here to get around the
20 statutory problem is the retroactive application of
21 rules that the Commission has yet to write.

22 So three weeks after the complaint in this
23 matter was filed, the complainant filed a petition for
24 rulemaking with the Commission asking the Commission
25 to clarify the rules for when campaigns like ours may

1 wind down their affairs.

2 Now, to give the complainant his due, the
3 complainant would contend, as he did contend, that our
4 clients violated the rules. I'm not going to get into
5 that, but if you read the petition for rulemaking, it
6 undercuts that claim of illegality.

7 It says, for example, that the rules are not
8 sufficiently clear to say when campaigns need to wind
9 down their activities. It says the Commission needs
10 to provide clear guidance to campaigns for how long
11 they have to wind down their activities.

12 It says even that the Commission should
13 consider establishing a time period by which campaigns
14 should be expected to wind down their activities,
15 which would make no sense whatsoever if the Gallegly
16 AO actually was a rule binding campaigns and not just
17 federal officeholders. But, nonetheless, that's what
18 the petition for rulemaking said.

19 The Commission has not adopted these rules,
20 and yet the norms that they urge are being enforced,
21 are being proposed to be enforced, against our
22 clients.

23 The Commission has taken some action with
24 respect to the issue of winding down campaigns. The
25 Reports Analysis Division announced a policy by which

1 it would send notices to campaigns in the case of
2 members of the House of Representatives where the
3 campaign remained registered and active two years
4 after the member of Congress had served. The
5 Commission was quite clear that this was not
6 signifying enforcement by itself. We're just going to
7 ask you, hey, what are you up to, you know, we're
8 looking at your expenditures.

9 Mark Takai had not been out of Congress for
10 two years when this matter was opened. He would not
11 have received any of the letters that the Commission
12 decided after the inception of this matter was going
13 to be sent.

14 It's prima facie evidence that there are
15 many, many, many committees that remain registered and
16 active far beyond when this committee was registered
17 and active, and yet the Commission as a normative
18 matter has not chosen to take regulatory action
19 against them. So these are problems. To look in the
20 rearview mirror and enforce these norms against this
21 committee is a problem.

22 The very last point I would make, and I'll
23 make it very, very briefly, is the policy thrust of
24 this recommendation is, I would submit, dangerous.
25 For 50 years, the Commission has been warning

1 campaigns not to underpay their vendors. You have an
2 act that is designed to prevent corruption or its
3 appearance. It's designed to prohibit contributions
4 in excess of the limits or from prohibited sources to
5 campaigns.

6 So, when I, as a lawyer, am asked to review
7 an arrangement between a campaign and a vendor, my
8 first question and maybe my last question is are we
9 paying them fair market value or are we receiving a
10 compensation because we've got to pay them an honest
11 day's wage for an honest day's pay.

12 But, if the Commission says not only do you
13 have to worry about that, but you also have to worry
14 about overpaying them even if they're not a member of
15 the family, even if they're not a candidate
16 themselves, even if it's just a law firm or a
17 political consulting firm or some other concern, then
18 I'll tell you how campaigns are going to react to
19 that.

20 Campaigns are going to try to drive the
21 price down. They're going to try to go to a vendor
22 and say, I'd love to pay you what you ordinarily
23 charge in the open market, but I have to worry about a
24 potential personal use finding, and so we've got to
25 drive the price down.

1 And it's hard to foresee exactly how that
2 would play out into a discrete, like, contribution,
3 but it's going to skew the incentives, the hermeneutic
4 for which campaigns review agreements, in a way that's
5 contrary to rather than promoting the anti-corruption
6 interests that you're trying to serve.

7 So, for these reasons, we would submit that
8 the recommendation has legal problems and that the
9 Commission should reject it.

10 CHAIR DICKERSON: Thank you, counselor. In
11 fact, you nailed the timing. You have four minutes
12 for rebuttal.

13 Colleagues? Commissioner Weintraub?

14 COMMISSIONER WEINTRAUB: Thank you,
15 gentlemen. Thank you. Thank you for coming. Thank
16 you for your very informative presentations.

17 So, just so I understand what the legal
18 argument is that you're making, and I'll give you an
19 example to flesh it out, is it your position that this
20 was not an unreasonable period of time for winding
21 down the campaign, or is it your position that there
22 can be no limits on the amount of time a campaign
23 takes to wind down?

24 So, let's say, hypothetical, the widow just
25 didn't want to deal with setting up a foundation and

1 just said let's just leave the money sitting there and
2 I'll deal with it later, and 10 years goes by, and for
3 10 years, Mr. Beesley is collecting almost \$6,000, I
4 think it comes out to almost \$70,000 a year, so that
5 over the course of 10 years he collects \$700,000 from
6 the campaign at a time when the campaign is not doing
7 anything. They've returned all the money, it's just
8 sitting there, the money's sitting in the bank
9 account, they have to file their FEC reports, but
10 other than that, they're not doing anything at all,
11 and they're just waiting for the widow to set up a
12 foundation so that they can then move the money over.

13 So would that be a problem? Is that
14 something that we could address, we can't address?
15 What's your thoughts on that?

16 MR. SVOBODA: Well, my first thought,
17 Commissioner, is that the Respondent could easily
18 address it by amending the statement of organization
19 saying they're a non-connected entity, not a principal
20 campaign committee, we have a problem with this. So
21 that's the first answer to that because it's a
22 question of form over substance, right? I turn it
23 into a PAC, my PAC can have continued existence, and
24 then I can pay the staff that I wish. I can incur the
25 expenses I wish, engage in continuing activity.

1 But, you know, more -- to be more responsive
2 to your particular question, let's just say they
3 stayed in principal campaign committee status, the
4 Commission doesn't prescribe a fixed time frame by
5 which that termination has to happen.

6 There are other rules from other agencies
7 that encourage that termination. So there's an IRS
8 regulation. It's 1.527-5(c)(2), which says that if a
9 campaign fails to dispose of its surplus funds in a
10 "reasonable time," it's treated as taxable income for
11 the estate.

12 So, if this campaign had just stayed open
13 for the 10 years or 20 years to close, then the Takai
14 family potentially has a legal problem for reasons not
15 only to the agency.

16 MR. PITTARD: Commissioner, I would just add
17 that I agree with everything that Mr. Svoboda said,
18 and I would just add that, here, factually, there was
19 no indication that the family was not going to create
20 the foundation, right? Yes, it took longer than we
21 all might have liked at this point, right, but there
22 was never an indication that they had just washed
23 their hands of it and it wasn't going to happen and,
24 therefore, we were going to be here 10 years later,
25 right?

1 Rather, Mr. Beesley continued to actively
2 prod them and was given indication, yeah, we've got a
3 lot going on here, but, yeah, we're going to get that
4 done, and as they did.

5 COMMISSIONER WEINTRAUB: No, I get all that.
6 I'm just trying to flesh out exactly what the legal
7 position is. So what I hear you saying is that even
8 if it had gone on for 10 years, 20 years, and they
9 were foolish enough not to convert to a multi-
10 candidate committee that wouldn't be subject to the
11 personal use rules, that would -- that might be an IRS
12 problem, but it's not an FEC problem.

13 MR. SVOBODA: I think that's correct,
14 Commissioner, but it's correct for a particular reason
15 that's unique to these facts, which is that there was
16 a written contract. So, if you asked us what our
17 legal position is, I would go back to home base, which
18 is 30114(a), which permits the use of campaign funds
19 to defray an obligation that exists because of the
20 campaign. It only prohibits expenses to defray
21 obligations that would have existed or were expected
22 of the campaign.

23 So that's what we're relying on at bottom
24 here, is the plain language of the statute and the
25 fact that in this case there was a contract and it

1 arose directly from the campaign.

2 COMMISSIONER WEINTRAUB: And should we, can
3 we, be concerned about the fact that the person who
4 negotiated the contract on one side is no longer with
5 us? So, I mean, in the normal course of a contract,
6 if one side feels like, well, I entered into this sort
7 of open-ended contract with a consultant, but I can go
8 back and renegotiate that, the person on the other
9 side of the contract is no longer with us. So is that
10 something that the Commission should or can be
11 concerned about?

12 MR. SVOBODA: You shouldn't be concerned
13 about it in this instance for two reasons. The first
14 is there is no evidence at all and no basis to
15 conclude that the original agreement was anything
16 other than an honest matter.

17 Second, there's ample evidence in the
18 General Counsel's brief that the Takai family acted in
19 the interest of restraining the campaign resources,
20 and that's where the colloquy after the complaint was
21 filed between Gary Kai and Dylan Beesley was important
22 where they agreed voluntarily to reduce the
23 compensation to \$750 a month.

24 One of the ironies here is that the General
25 Counsel uses that against Mr. Beesley and our clients

1 saying that that somehow renders all of the previous
2 payments or at least the 10 previous payments suspect
3 when, in fact, it shows the family's willingness
4 and/or Beesley's willingness to step up to the plate
5 and make an honest, like, you know, agreement in the
6 interest of the campaign's budget.

7 So you have a record that's completely
8 devoid of anybody taking advantage of anybody or
9 anybody trying to game the system, and, in fact, the
10 fact that the contract was left open-ended, the
11 Commission anticipated that when it wrote the rules in
12 1995 in the case of -- in the specific case of winding
13 down a Congressional office, and I want to be careful
14 about mixing my apples and oranges here, but they said
15 that this process can take longer than anticipated and
16 a prudent method has got to account for that.

17 MR. PITTARD: Commissioner, if I --

18 CHAIR DICKERSON: Go ahead, counsel.

19 MR. PITTARD: Yeah, I'll add two more things
20 if I could, and one is that, here, we have undisputed
21 fact at least on these facts, and I know you're asking
22 hypotheticals, but at least on these facts, we have
23 the undisputed fact that Sami Takai remained
24 "responsible" for approving the payments to Lanakila.
25 That's one.

1 And, two, to your broader point about should
2 we have a regime where there are limits in the wind-
3 down period for a campaign because of things like the
4 Congressman negotiates the contract and then dies,
5 right, as happened here, should we? I say maybe we
6 should, right, and that's something the Commission can
7 and, in my mind, should debate. I don't know the
8 answer to it, but, right, maybe there should, maybe
9 there should be a presumptive six-month thing like
10 there is for the federal office. There's not for the
11 campaign. Maybe there should be.

12 I don't know, but I do absolutely know that
13 it's totally inappropriate and unfair to people like
14 Dylan Beesley and Lanakila to retroactively impose
15 some kind of new rule like that. If that had been the
16 rule when Dylan Beesley was doing the wind-down, you
17 can be very sure that that's what would have been
18 complied with, but that wasn't.

19 CHAIR DICKERSON: Can I ask two clarifying
20 questions? First, what was the basis of Sami Takai's
21 authority to authorize payments?

22 MR. PITTARD: Yeah, legally, I don't know.
23 Actually, she was the wife of the member, she had been
24 very involved with the campaign when these were active
25 campaigns. After the Congressman was no longer

1 running, she remained very active.

2 Dylan Beesley, on behalf of Lanakila, was
3 writing memos to Sami Takai about the wind-down work.
4 He was conferring with her regularly, and he was
5 checking in with her before making payments to, for
6 example, Lanakila.

7 CHAIR DICKERSON: And my second question is
8 to the Office of General Counsel. There have been
9 repeated references to this being a truly arm's length
10 transaction. Does OGC have a response or disagreement
11 on that point, or is that an area of agreement between
12 the parties?

13 MS. STEVENSON: Commissioner, I think our
14 position is that we don't dispute it was an arm length
15 contract at the time it was initially negotiated.

16 CHAIR DICKERSON: Okay. Thank you.

17 Commissioner Cooksey?

18 COMMISSIONER COOKSEY: Thank you, Mr.
19 Chairman. I want to pick up on that in the questions
20 that Commissioner Weintraub was asking because I'd
21 maybe reframe them differently because I think the
22 problem that we're struggling with is, one, that
23 relates to the fact that it's a contract that is
24 perpetual, right, and I agree that there's no evidence
25 that the initial negotiation of the contract was not

1 an arm's length negotiation for what we would say is a
2 commercially reasonable rate for the services.

3 I think the problem is what is the
4 obligation to renegotiate that contract if the
5 services become unnecessary as time passes on and who
6 is in a position to do that.

7 So I guess a couple clarifying questions,
8 which is, you know, there's a lot of repetition about
9 that it was initially negotiated at arm's length, but
10 does counsel concede that over time, as Commissioner
11 Weintraub sort of alluded to with her hypothetical, it
12 could be the case that the services are no longer, you
13 know, being provided commensurate with the rate that's
14 being paid as the months go on if there's not a
15 sufficient amount of work and that there becomes a
16 duty to sort of renegotiate, to reset it to calibrate
17 it to the appropriate market rate?

18 MR. SVOBODA: Commissioner, the question --
19 were there facts that the Treasurer was purposely slow
20 walking the wind-down? Was there facts -- were there
21 facts that the Treasurer was taking advantage of the
22 perpetual nature of the contract in order to be paid?

23 Then we'd have the argument potentially that
24 those payments, you know, somehow did not represent an
25 obligation that existed or represented an obligation

1 that existed irrespective of the campaign, but you
2 don't have those facts in this matter. And I think
3 that's one of the core misunderstandings in this
4 matter that led to the initial RTB finding and it's
5 not where we are here today, which is there was some
6 supposition that the campaign purposely -- that the
7 Treasurer himself was purposely taking longer than he
8 ought to to wind down the campaign, and the fact of
9 the matter was he wasn't.

10 But, on top of that, though, I think there's
11 an additional argument, which is that continued
12 service as Treasurer for a committee is worth
13 something beyond -- above and beyond what somebody is
14 paying to provide the discrete wind-down services for
15 which the campaign is providing.

16 Dylan Beesley midstream voluntarily took on
17 legal obligations that the Commission takes seriously,
18 you can read about in the Commission's statement of
19 policy the Treasurer liability, and had the committee
20 paid him simply to do that, to absorb that legal
21 responsibility and bear its risk, I mean, that's a
22 payment for value separate and apart from what the
23 original contract provided.

24 So the quick answer is I can foresee a
25 circumstance, Commissioner, where we might have that

1 sort of problem if there's background facts that the
2 initial obligation was not bonafide, but those aren't
3 the facts in this matter.

4 COMMISSIONER COOKSEY: The citation that is
5 provided to support the contention that Sami Takai had
6 authority for vendor payments is, I guess, an email
7 from late 2016 or early 2017 essentially asking for
8 direction from Beesley about any payments that need to
9 be issued, I think, to maybe a compliance vendor and
10 then a payment to Beesley himself. Of course, we're
11 talking about payments that stretch into 2018.

12 I guess, what is the evidence in the record,
13 if any, beyond that about Sami Takai's actual
14 authority, legal authority, to handle or authorize
15 payments on behalf of the committee?

16 I mean, the Chairman asked this question in
17 a different form, but I think it is pretty critical to
18 the analysis to understand whether this was a
19 situation in which truly Mr. Beesley was on both sides
20 of the deal, in other words, no one else was in a
21 position to call for a renegotiation of this contract,
22 or whether, actually, there was someone with a formal
23 legal role on the committee who, you know, was in a
24 position to, you know, admittedly passively assent to
25 the continuation of the contract for Mr. Beesley and

1 for Lanakila.

2 MR. PITTARD: I'll address that in a couple
3 ways. One, I don't think there's any dispute that
4 throughout the life of the wind-down process Mr.
5 Beesley consulted with and got approval from Sami
6 Takai for payment, including particular payments to
7 Lanakila. It was not limited -- I believe the
8 footnote citation that you're referring to references
9 maybe two different emails or documents in support of
10 the statement that Sami Takai was responsible for
11 approving those payments, right, but those are
12 illustrative rather than exhaustive. So, factually,
13 that was the case.

14 How did Dylan Beesley come to have the
15 Treasurer role? Remember, when he negotiated the
16 contract on behalf of Lanakila, he did not have the
17 Treasurer role, he did not have a campaign side role,
18 right, so it was entirely an arm's length negotiation.

19 Yes, he did acquire that at some point
20 because we were in this wind-down and the Treasurer
21 decided to leave, as he was entitled to do, and Sami
22 Takai came to Dylan Beesley and said, hey, you're
23 handling the wind-down, you'll take over the Treasurer
24 role, please, won't you, and Dylan said, sure, I'll do
25 it, right.

1 So, look, I can see that that then creates
2 an awkward situation, right, but it wasn't something
3 that was contrived to happen. It was Dylan doing his
4 best to help out under a contract that had been
5 negotiated at arm's length beforehand, right, through
6 the previous arrangement that you can be sure they --
7 the Commission can be sure they had a safe arrangement
8 that was negotiated at arm's length in the market,
9 right? That's what the parties agreed to, and then
10 they continued to operate under that route.

11 And then there's the fact that Dylan
12 basically performed that contract, right, never did
13 anything to delay it or what have you.

14 And after all that, if the Commission is
15 left with any kind of feeling of discomfort, and I
16 would say you should have none here given Dylan's
17 behavior, you should have none here, but I can see
18 your sort of hypothetical confirmed that in a
19 different world, with a less honorable individual
20 involved, you might have a concern or there might -- a
21 problem might develop, right?

22 And if that's where the Commission is, then
23 you all should respectfully think about putting in
24 place a particular rule, maybe a six-month wind-down,
25 maybe a one-year wind-down. I don't know. But, as

1 I've said, I do know that what is absolutely
2 inconsistent with due process, it would be totally
3 unfair to Dylan Beesley and Lanakila just to declare
4 retroactively that, oh, yeah, that's the rule and you
5 violated it. Never told you that, but that's --

6 MR. SVOBODA: If I may make one just very
7 last point in response to the Commissioner's
8 questions. One of the interesting things about this
9 matter is we have no objective way of knowing under
10 the General Counsel's recommendation when the
11 compensation for Dylan Beesley was supposed to
12 diminish.

13 We are told that at some moment in March of
14 2017 related to some meeting with Sami Takai that
15 there was a moment, like in the *Wizard of Oz*, when it
16 all turns from black and white into color, when the
17 compensation level of \$5500 ceased to be permissible
18 and the compensation level of \$750 should begin, but
19 we're given no objective reason to know why or how,
20 and had someone been asked at the time to determine
21 why or how, nobody would have been able to determine
22 that. The answer would have been what did the
23 contract provide, are you paying from the contract.

24 COMMISSIONER COOKSEY: Well, I think the
25 problem with that is that goes to the level of scale,

1 not to whether there was an actual violation, right?
2 I agree that that's a difference about what the delta
3 is between his previous payment and then his
4 renegotiation of the payment. But that just says we
5 don't know the exact scale or the scope of the
6 personal use, if there is personal use, not -- and the
7 fact that we can't precisely date it, I think, just
8 sort of gives us, again, some doubt or lack of clarity
9 about the full scope.

10 I mean, Mr. Pittard, I'm not -- I think you
11 sort of answered my first question, but then there was
12 a lot that came after it, so I just want to go back
13 and repeat the question and see if I can get a more
14 concise answer to fully understand, what is the
15 evidence in the record that Sami Takai had authority
16 or was actually involved in vendor payments and that,
17 you know, she was the person in a position to demand a
18 renegotiation? Is there anything beyond those two
19 emails that you cited earlier?

20 MR. PITTARD: I think the answer is yes. I
21 cannot point to you right now additional emails, but
22 we produced a lot of emails here, many of which were
23 communications between Dylan Beesley and Sami Takai.

24 I know -- I remember the memos that we wrote
25 describing what he was doing and payments that were

1 being made. I really don't think there's any factual
2 dispute about whether Sami Takai was performing that
3 function.

4 MR. SVOBODA: May I? If I could take a stab
5 at that, Commissioner?

6 I think, if you applied, for example, your
7 soft money fundraising and spending rules or you
8 applied your independent expenditure rules, I think
9 it's clear on the facts in the General Counsel's
10 opening brief that you'd find Sami Takai to be an
11 agent of the campaign, that she would have actual
12 authority implied to act on behalf of the campaign.

13 So, as you go through the brief, you see
14 evidence that she was responsible for issuing checks
15 and authorizing payment on invoices to vendors,
16 including Lanakila. That's on pages 8 and 9 of the
17 brief.

18 If you look at the repeated tempo of
19 meetings and communications between Dylan Beesley, the
20 operative, and Sami Takai, indicating functionally
21 that he's answering to her. You're seeing that on
22 pages 9 and 10 of the brief.

23 You're seeing questions that Dylan Beesley
24 is presenting to Sami Takai about checks and invoices,
25 including asking for approval of Lanakila's bill.

1 You're seeing it on pages 10 and 11 of the brief.

2 So, if this wasn't a personal use case, if
3 this was a soft money spending case, Sami Takai would
4 totally be an agent.

5 CHAIR DICKERSON: Commissioner Broussard?

6 COMMISSIONER COOKSEY: Mr. Chairman?

7 CHAIR DICKERSON: Commissioner Cooksey.

8 COMMISSIONER COOKSEY: If I could just ask a
9 clarifying question then to the Office of General
10 Counsel of what their position is or their
11 interpretation or their view of what role Sami Takai
12 had during these later months, I'm talking about, you
13 know, 2018, on the campaign and whether she was
14 someone who had authority, either actual or formal, on
15 the campaign to renegotiate the Beesley contract.

16 MS. STEVENSON: Commissioner Cooksey, as to
17 the factual question, I believe, other than the two
18 emails you cited, there are other emails in the record
19 that reflect Sami Takai approving payments to Mr.
20 Beesley.

21 Beyond that, to the extent there's a legal
22 question about the scope of Agency authority, I would
23 defer that to an executive session, where we could
24 perhaps provide counsel more freely in that context.

25 COMMISSIONER COOKSEY: That's very helpful.

1 Thank you very much.

2 MR. PITTARD: Mr. Chairman, if I could add
3 one -- one additional point was just simply that in
4 2018 the campaign voluntarily brought on a Deputy
5 Treasurer, a man named Gary Kai, right? So, to the
6 extent the concern is 2018 going forward, there was an
7 additional person in place on the campaign side as a
8 "check." So, again, factually, this is another reason
9 it's not a concern in this circumstance.

10 CHAIR DICKERSON: Commissioner Trainor?

11 COMMISSIONER TRAINOR: But did the Deputy
12 approve payments?

13 MR. PITTARD: Well, did he approve payments?
14 He is the person who actively negotiated the going
15 forward rate, right, in March of 2018. He was aware
16 of payments. Whether he approved each -- whether --
17 well, I guess, the answer is probably no, is no as to
18 Lanakila, and the reason it's no as to Lanakila is
19 because no further payments were made, right?

20 After they renegotiate the rate down to 750
21 a month going forward, beginning for February, March,
22 and April of 2018, those payments are made, and the
23 Deputy Treasurer, Gary Kai, certainly knows about
24 those. And then, after that, no further payments have
25 been made to Dylan -- to Lanakila.

1 MR. SVOBODA: The record does indicate Gary
2 Kai's involvement in the setup and funding of the
3 foundation, and the payment to the foundation occurs
4 at this point through his accession as Deputy
5 Treasurer.

6 CHAIR DICKERSON: Commissioner Brossard?

7 COMMISSIONER BROUSSARD: Thank you. But
8 isn't it Mr. Kai in one of these email exchanges when
9 the renegotiation to the 2500 a month says that he
10 doesn't believe that he can recommend that to Ms.
11 Takai?

12 MR. PITTARD: Yes, thank you, Commissioner,
13 you're exactly right that in the renegotiation in
14 March of 2018, where the two sides agree on the \$750 a
15 month going forward, Dylan Beesley on behalf of
16 Lanakila at first suggests lowering it from 5500 to
17 2500, and the response from Gary Kai, you're
18 absolutely right, is I don't think I can recommend
19 that to Sami Takai. So it's more evidence that Sami
20 Takai was serving in this role.

21 CHAIR DICKERSON: Alex? Does the Office of
22 General Counsel or the Office of the Staff Director
23 have any questions? Commissioner Weintraub?

24 COMMISSIONER WEINTRAUB: I don't know if you
25 will feel comfortable answering this question, but I'm

1 going to ask it anyway. Mr. Svoboda, who hired you
2 to -- were you counsel to the Takai campaign when
3 Congressman Takai was still alive? And, if not, who
4 hired you on behalf of the campaign?

5 MR. SVOBODA: I can answer that actually.
6 We did represent the campaign before the Congressman
7 passed away, and I think that will be reflected in our
8 commission.

9 COMMISSIONER WEINTRAUB: Okay. Thanks.

10 CHAIR DICKERSON: Thank you. Mr. Pittard,
11 you have one minute, as you requested, and Mr.
12 Svoboda, you have four. You can actually take it in
13 whichever order you please.

14 MR. PITTARD: I'll hit what I think are the
15 main factual points, right?

16 At the risk, Commissioner Cooksey, of
17 belaboring the arm's length point, it's an arm's
18 length contract that's written. It provides for a
19 flat monthly fee. There's no surprise that the work
20 was heavy and then lighter. That is what was
21 negotiated, that is what we expected. It never varied
22 from that. Never tipped the hand in the cookie jar.
23 Never did anything different than what the contract is
24 about.

25 Dylan was not the one responsible for

1 approving payments to Lanakila. And, finally, Dylan
2 hastened the wind-down. They're all undisputed. I
3 think it will clearly show there's no liability, no
4 wrongdoing here. At the very least, they show that
5 this is not a case that the Commission should pursue
6 against Dylan Beesley and Lanakila or anybody.

7 If the Commission wants to change the rules
8 and go after him based on anything like those other
9 rules, it can.

10 CHAIR DICKERSON: Counselor?

11 MR. SVOBODA: It's clear that with respect
12 to the wind-down of campaigns, the Commission has a
13 lot of difficult policy questions to make on a
14 prospective basis. I hear that loud and clear from
15 the Commission -- from the questions that Commissioner
16 Weintraub was asking about how long can be permitted
17 for incrimination. I hear that loud and clear from
18 the questions that Commissioner Cooksey asked.

19 But the adjudication of this matter through
20 enforcement is not the way to resolve those questions.
21 The Commission said clearly that rulemaking is not
22 simply the preferred method to fill in any gaps in
23 CICA, as it said in the Bill Corn product, it is the
24 required method.

25 And this is the last thought that I want to

1 leave the Commission with about this matter. If the
2 Commission finds probable cause on this matter in
3 these facts saying that these 10 payments represented
4 a prohibited personal use, then the Commission is
5 going to send a shock through the people who follow
6 what the Commission does and who advise campaigns on
7 what to do on a day-to-day basis.

8 You will have people who will have engaged
9 in transactions up to the present day that are going
10 to have cause to doubt the legality of those
11 transactions when they haven't before. Maybe it's a
12 compliance firm that is being paid to serve as
13 treasurer or a campaign that hasn't terminated yet.

14 Maybe they're filing reports of no activity
15 on a quarterly basis while making their \$500 a quarter
16 or their thousand dollars a quarter, and now they have
17 to worry are we being overpaid, are we being paid fair
18 market value, am I the person prepared to support
19 facing liability for a prohibited personal use of
20 campaign funds.

21 Maybe it's the staffer or consultant who is
22 responsible for overseeing the wind-down of a campaign
23 where, for unexpected reasons, as it was in the case
24 of this matter, that it takes longer than expected.

25 Maybe it's the law firm that's paid by a

1 presidential campaign on a retainer basis where the
2 campaign remains open for a long period of time under
3 a retainer agreement like the one Mr. Pittard talked
4 about where it's 10 years down the road the campaign
5 can't terminate yet because of being sued in New
6 Mexico or being sued in Arizona. It's facing
7 employment disputes, it's facing other compliance
8 obligations, and yet the lawyers are making their
9 \$10,000, their \$20,000, whatever it is that was
10 arranged in the flat fee payment schedule.

11 Those are just examples of what the
12 Commission is going to deal with if it renders a
13 finding of probable cause in this matter, it is going
14 to be large, unwelcome news to the regulatory
15 community.

16 These are the sorts of problems that ought
17 to be dealt with through a rulemaking process. They
18 ought to be considered through thoughtful policymaking
19 where the goalposts are not being suddenly moved, but
20 people have an opportunity to provide notice and
21 comment on the application of these rules. That as
22 yet has not happened in the context of this
23 enforcement action, and it's something that the
24 Commission should take very seriously.

25 My very final thought is that a finding of

1 probable cause in these matters, we would submit, are
2 entirely unjust. We have two different lawyers here
3 representing two different clients, Bill Pittard
4 representing Lanakila and Dylan Beesley and myself
5 representing the campaign.

6 We did that at the very inception of this
7 matter by design to try to avoid the appearance of any
8 sort of inappropriate collapse of Mr. Beesley's role
9 in the matter, but it is the strong belief of the
10 Takai family that Mr. Beesley in this matter did
11 nothing wrong, that he simply received the payments by
12 which the contract entitled him in accordance with the
13 law. So the Commission should not perceive from the
14 fact that there are two of us rather than one of us
15 any lack of unity on this matter. These people under
16 very difficult circumstances made the best decisions
17 they could at the time.

18 In January of 2018, when the news accounts
19 came out in the Honolulu newspaper and the Zombie
20 campaign article came out in the *Tampa Bay Times*, they
21 all found themselves in circumstances they couldn't
22 have foreseen, and now, four years later, here we are.

23 We'd like the opportunity simply to be able
24 to terminate our campaign, finally wind up our
25 affairs, and go home. And with that, I appreciate the

1 Commission's time and indulgence today.

2 CHAIR DICKERSON: Thank you, gentlemen. We
3 appreciate your appearance. We are adjourned.

4 (Whereupon, at 11:16 a.m., the probable
5 cause hearing in the above-entitled matter adjourned.)

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CERTIFICATE

DOCKET NO.: MUR 7310
CASE TITLE: Mark Takai for Congress, et al.
HEARING DATE: May 10, 2022
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Election Commission.

Date: May 10, 2022



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