



# FACT

FOUNDATION FOR  
ACCOUNTABILITY  
AND CIVIC TRUST

April 19, 2022

Omar Ashmawy  
Chief Counsel  
Office of Congressional Ethics  
U.S. House of Representatives  
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Washington, DC 20024  
Email: [oce@mail.house.gov](mailto:oce@mail.house.gov)

RE: Rep. Kaiali'i Kahele (Hawaii)

Dear Mr. Ashmawy,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Congressional Ethics (OCE) immediately investigate Representative Kaiali'i Kahele for two separate violations of the House ethics rules. First, Rep. Kahele took official action by co-sponsoring legislation and serving on a committee when it appears he has a conflict of interest with an outside employer. Second, over a period of nearly three months Rep. Kahele has stated to the House Clerk that he could not vote in person due to the ongoing COVID pandemic, but instead he has actually been attending political events. Both of these actions appear to be contrary to House ethics rules and should be fully investigated by the OCE.

## I. Conflict of Interest

**Facts.** Rep. Kahele was elected to represent Hawaii's second district and became a Member of Congress in January 2021.<sup>1</sup> He also began serving on the House Transportation and Infrastructure Committee and its Aviation Subcommittee at that time.<sup>2</sup>

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<sup>1</sup> *Kai Kahele Sworn In As U.S. Representative*, Honolulu Star Advertiser, Jan. 3, 2021, <https://www.staradvertiser.com/2021/01/03/hawaii-news/kai-kahele-sworn-in-as-u-s-representative-becomes-the-2nd-native-hawaiian-to-serve-in-congress/>.

<sup>2</sup> U.S. Congressman Kaiali'i Kahele, *Committees and Caucuses*, <https://kahele.house.gov/about/committees-and-caucuses> (last visited April 13, 2022); *Kahele Nominated to Transportation & Infrastructure Committee*, Big Island Gazette, Dec. 18, 2020, <https://bigislandgazette.com/kahele-nominated-to-transportation-infrastructure-committee/> (stating that on Dec. 18, 2020, Congressman-Elect Kahele was nominated to serve on the House Transportation and Infrastructure Committee in the 117th Congress).

Before becoming a Member, Rep. Kahele worked as a pilot for Hawaiian Airlines, and in 2020 reported both he and his spouse earned income from Hawaiian Airlines.<sup>3</sup> He continued to work for Hawaiian Airlines after becoming a Member, stating on his website: “In addition to serving the country in Congress and the Armed Forces, Congressman Kahele is an active commercial airline pilot with Hawaiian Airlines where he flies the Airbus A330 wide-body aircraft on both domestic and international routes.”<sup>4</sup> On April 11, 2022, Kahele’s spokesperson confirmed Kahele continues to work for Hawaiian Airlines, stating: “He is an active member of the airline union, the ALPA Pilots Union, and is a certified commercial pilot and active member of Hawaiian Airlines. He does fly occasional flights to maintain his certification.”<sup>5</sup> Recently his spokesperson claimed that Kahele earned \$29,151.97 from Hawaiian Airlines in 2021 and \$2,861.90 so far in 2022.<sup>6</sup>

In 2021, Kahele co-sponsored four bills that affect the aviation industry:

- On February 11, 2021, Kahele cosponsored H.R. 884, The National Aviation Preparedness Plan Act of 2021.<sup>7</sup>
- On August 10, 2021, Kahele cosponsored H.R. 911, The Saracini Enhanced Aviation Safety Act of 2021.<sup>8</sup>
- On April 22, 2021, Kahele cosponsored H.R. 2770, The Healthy Flights Act of 2021.<sup>9</sup>
- On September 23, 2021, Kahele cosponsored H.R. 3440, The Sustainable Skies Act.<sup>10</sup>

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<sup>3</sup> Kaiali’i Kahele, *Financial Disclosure Report*, Clerk Of The House Of Representatives, filed Aug. 16, 2021, [https://disclosures-clerk.house.gov/public\\_disc/financial-pdfs/2020/10042595.pdf](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10042595.pdf) (reporting he earned income from Hawaiian Airlines in the amount of \$119,684.93 and his spouse earned income from Hawaiian Airlines in the amount of \$22,552.18); Nick Grube, *Questions Raised Over Kai Kahele’s Job With Hawaiian Airlines*, Honolulu Civil Beat, April 12, 2022, <https://www.civilbeat.org/2022/04/questions-raised-over-kai-kaheles-job-with-hawaiian-airlines/> (reporting Kahele has worked for Hawaiian Airlines since at least 2016 when he was first appointed to public office).

<sup>4</sup> U.S. Congressman Kaiali’i Kahele, *About*, <https://kahele.house.gov/about>, accessed April 13, 2022.

<sup>5</sup> Alex Daugherty and Oriana Pawlyk, *Kai Kahele Is Still A Pilot On ‘Occasional Flights’ For Hawaiian Airlines While A Member Of Congress*, Politico, April 11, 2022, <https://www.politico.com/minutes/congress/04-11-2022/kahele-moonlight-gig/>.

<sup>6</sup> Melanie Zanona, *Kahele Defends Dual Role As Member Of Congress And Hawaiian Airlines Pilot, Along With Proxy Voting Record*, CNN, April 13, 2022, <https://www.cnn.com/2022/04/13/politics/kai-kahele-proxy-voting-hawaiian-airlines-pilor/index.html>.

<sup>7</sup> H.R. 884, Congress.gov, introduced Feb. 5, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/884/cosponsors?q=%7B%22cosponsor-state%22%3A%22Hawaii%22%7D>.

<sup>8</sup> H.R. 911, Congress.gov, introduced Feb. 8, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/911/cosponsors?r=5&s=1&q=%7B%22cosponsor-state%22%3A%22Hawaii%22%7D>.

<sup>9</sup> H.R. 2770, Congress.gov, introduced April 22, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2770/cosponsors?r=9&s=1&q=%7B%22cosponsor-state%22%3A%22Hawaii%22%7D>.

<sup>10</sup> H.R. 3440, Congress.gov, introduced May 20, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3440/cosponsors?r=3&s=1&q=%7B%22cosponsor-state%22%3A%22Hawaii%22%7D>.

Hawaiian Airlines, Kahele's employer, reported it lobbied Congress in 2021 on every bill listed above that Kahele co-sponsored.<sup>11</sup>

**Law.** The House Ethics rules require Members to “conduct themselves at all times in a manner that reflects creditably on the House” and to adhere to the spirit as well as the letter of the ethics rules.<sup>12</sup> Specific rules require Members to refrain from taking official action when the Member has (1) an apparent conflict of interest, or (2) an actual conflict of interest.

A conflict of interest exists when a Member's private affairs appear to, or actually do, conflict with their ability to officially act on behalf of the public interest.<sup>13</sup> “The ultimate concern ‘is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests.’”<sup>14</sup> Because the integrity of government action is at risk, the ethics rules require Members to refrain from official action where there is even an inference of a conflict, as well as where there is an actual conflict.<sup>15</sup> Thus, a conflict arises when a Member's personal interest creates doubt the Member can act impartially and in the public interest.<sup>16</sup> Furthermore, a Member is prohibited from corruptly using his or her official position for personal or pecuniary gain.<sup>17</sup>

There are two separate types of official action in a conflict of interest analysis: (1) voting on legislation<sup>18</sup> and (2) other official action.<sup>19</sup> With respect to voting, a Member should not vote

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<sup>11</sup> Hawaiian Airlines Inc., *Lobbying Report*, Clerk of the House of Representatives, filed Jan. 20, 2022, <https://lda.senate.gov/filings/public/filing/35dabaaf-7f64-4b0d-9924-81f2deda58fa/print/>.

<sup>12</sup> House Ethics Manual, Comm. on Standards of Official Conduct, U.S. House of Reps., at 1, 186 (2008 ed.) (available at [https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008\\_House\\_Ethics\\_Manual.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf)).

<sup>13</sup> *Id.* at 187. “A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. . . . At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties.” *Id.* at 250-51.

<sup>14</sup> *Id.* at 187 (citing Association of the Bar of the City of New York Special Comm. on Congressional Ethics, Congress and the Public Trust 39 (1970)).

<sup>15</sup> *Id.* at 186 (the Standards Committee advises Members to “to avoid situations in which even an inference might be drawn suggesting improper conduct.”); *Id.* at 251 (“The Standards Committee has admonished all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”).

<sup>16</sup> *Id.* at 250-51; *see also id.* at 185-86 (citing House Rule 25, clause 1(a)(2)) (stating a “key provision” of the House Code of Official Conduct prohibits a Member from using his official position for personal gain, including pecuniary gain).

<sup>17</sup> *Id.* at 250-51; *see also id.* at 185-86 (citing House Rule 25, clause 1(a)(2)) (stating a “key provision” of the House Code of Official Conduct prohibits a Member from using his official position for personal gain, including pecuniary gain).

<sup>18</sup> “Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.” *Id.* at 234 (quoting House Rule 3).

<sup>19</sup> *Id.* at 237.

on legislation in which he or she has “a direct personal or pecuniary interest.”<sup>20</sup> However, a much stricter conflict analysis applies to other acts connected to a Member’s official duties, such as sponsoring legislation or contacting an executive branch agency.<sup>21</sup> “Such actions entail 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. Moreover, such actions may implicate the rules and standards, discussed above, that prohibit the use of one’s official position for personal gain.”<sup>22</sup> In assessing whether a Member has a conflict that prohibits official action, the Member’s spouse’s employment and investments are also fully considered as the Member’s own.<sup>23</sup>

**Rep. Kahele’s Conflict of Interest & Outside Employment.** Kahele continues to be affiliated with Hawaiian Airlines and earn income from the company, while simultaneously serving on a Congressional committee and subcommittee that directly affects his outside employer and is co-sponsoring legislation his outside employer has a direct interest in and lobbied on. The ethics rules acknowledge a similar situation may lead to a conflict of interest stating, “For example, a conflict of interest may arise when the prospective outside employer is an entity with interests before Congress.”<sup>24</sup> But this case does not involve a “prospective outside employer” but a current one with business interests directly before the Member’s committee and an interest in legislation co-sponsored by the Member.

Under a standard conflict of interest analysis, the question is whether Kahele’s private affairs or outside employment appear to conflict with his ability to act impartially and on behalf of the public interest?<sup>25</sup> The answer is yes, simply based on his relationship with Hawaiian Airlines. The employment relationship is one that would, at a minimum, give the appearance the Member was unable to act impartially or that the employer has special access to the Member. Moreover, this is a case where a stricter conflict of interest analysis applies because Kahele is co-sponsoring legislation and taking action as a committee member that directly affects his outside

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<sup>20</sup> “Since legislation considered by Congress affects such a broad spectrum of business and economic endeavors, a Member of the House may be confronted with the possibility of voting on legislation that would have an impact upon a personal economic interest.” *Id.* at 234. In drawing the distinction of when a Member has a conflict that disqualifies him from voting, the principle generally applied has been “where legislation affected a class as distinct from individuals, a Member might vote.” *Id.* at 234. On the other hand, the Ethics Committee has advised “it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests.” *Id.* at 237. Essentially, in determining whether a conflict prohibits voting, the relevant factors to consider are whether the legislation affects a large group and the Member’s interest is small in the group.

<sup>21</sup> *Id.* at 237.

<sup>22</sup> *Id.* at 237.

<sup>23</sup> See, e.g., *id.* at 187-88 (“outside employment of a spouse”); *id.* at 244 (employment); *id.* at 245 (spouse’s income generally accrues to Member’s benefit); *id.* at 253 (investments). See also *id.* at 245 (prohibiting a Member’s spouse from lobbying the Member).

<sup>24</sup> *Id.* at 187.

<sup>25</sup> *Id.* at 1, 237.

employer, which is further evidenced by Hawaiian Airlines lobbying on the bills Kahele co-sponsored and the subject matter of the committee. The conflict of interest is clear.

## II. Abuse of Proxy Vote

**Facts.** A news organization’s “analysis of Kahele’s voting record found that over the past four months Kahele has rarely spent any time in Washington.”<sup>26</sup> In 2022, Kahele cast five votes in person over the course of three days in January, and since then has cast 120 votes by proxy.<sup>27</sup> For his proxy votes, Kahele filed a letter with the House Clerk, in which he stated: “I continue to be unable to physically attend proceedings in the House Chamber due to the ongoing public health emergency and hereby grant the authority to cast my vote by proxy. . . .”<sup>28</sup>

However, it does not appear that Kahele has been unable to physically attend House proceeding due to COVID. When questioned about his absence recently, Kahele’s office argued that he is worried about potential exposure to COVID-19,<sup>29</sup> but Kahele’s social media posts show him physically present at political or social events on days he missed votes. A few examples are below:

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<sup>26</sup> Nick Grube, *Has Rep. Kai Kahele Given Up On Washington?* Honolulu Civil Beat, April 11, 2022, <https://www.civilbeat.org/2022/04/has-us-rep-kai-kahele-given-up-on-washington/>.

<sup>27</sup> Roll Call Votes, Clerk Of The United States House Of Representatives, accessed April 14, 2022, <https://clerk.house.gov/Votes?page=12>. Nick Grube, *Has Rep. Kai Kahele Given Up On Washington?* Honolulu Civil Beat, April 11, 2022, <https://www.civilbeat.org/2022/04/has-us-rep-kai-kahele-given-up-on-washington/>.

<sup>28</sup> *See, e.g.*, Kaiali’I Kahele, Clerk Of The United States House Of Representatives, filed April 4, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/active/Kahele-HI02-20220404-24.pdf>

<sup>29</sup> Melanie Zanova, *Kahele Defends Dual Role As Member Of Congress And Hawaiian Airlines Pilot, Along With Proxy Voting Record*, CNN, April 13, 2022, <https://www.cnn.com/2022/04/13/politics/kai-kahele-proxy-voting-hawaiian-airlines-pilot/index.html>

On March 18, 2022, Kahele cast a vote by proxy ([Roll Call 82](#)), when he was giving a speech in Makua, HI:<sup>30</sup>



On March 1, 2022, Kahele cast votes by proxy ([Roll Call 50](#) and [Roll Call 49](#)), when he was on a “multi-day tour”:<sup>31</sup>



<sup>30</sup> Kai Kahele, Twitter, Mar. 18, 2022, <https://twitter.com/kaikahele/status/1504937853419077633?s=20&t=CO3xFkMKG6vksgyN3eEFwQ>; Roll Call 82 Proxy Votes, Clerk Of The House Of Representatives, Mar. 18, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll82.pdf>.

<sup>31</sup> Laura Ruminski, *Kahele Tours Kona: Congressman Visits Multiple Sites, Gets Update On Airport Plans*, West Hawaii Today, Mar. 3, 2022, <https://www.westhawaii.com/2022/03/03/hawaii-news/kahele-tours-kona-congressman-visits-multiple-sites-gets-update-on-airport-plans/>; Roll Call 50 Proxy Votes, Clerk Of The House Of Representatives, Mar. 1, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll50.pdf>; Roll Call 49, Proxy Votes, Clerk Of The House Of Representatives, Mar. 1, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll49.pdf>.



On February 4, 2022, Kahele cast votes by proxy ([Roll Call 31](#), [Roll Call 30](#), [Roll Call 29](#), and [Roll Call 28](#)), when he was in Hā'ena State Park and at a family farm in Hanalei:<sup>32</sup>



<sup>32</sup> Kai Kahele, Twitter, Feb. 4. 2022, <https://twitter.com/kaikahele/status/1489811633031430150>; Kai Kahele, Twitter, Feb. 4. 2022, <https://twitter.com/RepKahele/status/1489489883924107264?s=20&t=CO3xFkMKG6vksgyN3eEFwQ>; Roll Call 31 Proxy Votes, Clerk Of The House Of Representatives, Feb. 4, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll31.pdf>; Roll Call 30 Proxy Votes, Clerk Of The House Of Representatives, Feb. 4, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll30.pdf>; Roll Call 29 Proxy Votes, Clerk Of The House Of Representatives, Feb. 4, 2022, <https://clerk.house.gov/legislative/proxy-letters/117/2/votes/2022/roll29.pdf>.

**Law.** On May 15, 2020, the ability to vote by proxy was authorized at any time after the Speaker of the House was notified by the Sergeant-at-Arms that a “public health emergency due to a novel coronavirus is in effect.”<sup>33</sup> Thus, the purpose of a proxy vote must be due to the “public health emergency”<sup>34</sup> and the procedure for proxy voting was not authorized for any other purpose.

Further, the House ethics rules require Members to “conduct themselves at all times in a manner that reflects creditably on the House.”<sup>35</sup> This is a broad and “comprehensive provision” that is applied to any conduct taken in a Member’s official capacity.<sup>36</sup> For example, Members have been investigated and disciplined under this rule related to “making statements that impugned the reputation of the House” and “making false statements to the [Ethics] Committee.”<sup>37</sup> In addition, Members are required to adhere both to the spirit and the letter of the House ethics rules, and thus they must read all the rules and ethical requirements broadly.<sup>38</sup>

**Rep. Kahele’s Abuse of the Proxy Vote.** According to the the House resolution authorizing the proxy vote, the reason for exercising this option must be due to the “public health emergency.” For each of his 120 proxy votes, Kahele stated he was “unable to physically attend” House proceedings due to the COVID-19 pandemic. However, it clearly appears that was not the reason Kahele did not vote in person for approximately three months. Rather, seemingly it was because he was attending other public and political events during this time.

The statements made to the House Clerk were done in his official capacity and directly related to his official duties. Rep. Kahele’s abuse of the proxy vote and the statements he made to the House Clerk in order to do so do not reflect creditably on the House.

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<sup>33</sup> House Resolution 965, *Authorizing Remote Voting by Proxy in the House of Reps. & Providing for Official Remote Comm. Proceedings During a Public Health Emergency Due to a Novel Coronavirus, & for Other Purposes*, 116th Congress 2019-2020 (May 15, 2020), available at: <https://www.congress.gov/bill/116th-congress/house-resolution/965/text>.

<sup>34</sup> House Resolution 965, *Authorizing Remote Voting by Proxy in the House of Reps. & Providing for Official Remote Comm. Proceedings During a Public Health Emergency Due to a Novel Coronavirus, & for Other Purposes*, 116th Congress 2019-2020 (May 15, 2020), available at: <https://www.congress.gov/bill/116th-congress/house-resolution/965/text>.

<sup>35</sup> House Ethics Manual at 1, 12 (citing House Rule 23, clause 1).

<sup>36</sup> House Ethics Manual at 13.

<sup>37</sup> House Ethics Manual at 14 (citing House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. 95-1743, 114th Cong. Rec. 8785, at 3-4 (Counts 3-4) (Apr. 3, 1968); House Ethics Manual at 16 (citing House Comm. on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, H. Rep. 108-722, 108th Cong., 2d Sess. (Oct. 4, 2004)).

<sup>38</sup> House Ethics Manual at 17.



### **III. Conclusion.**

The ethics rules function to maintain the integrity of government action, and the Office of Congressional Ethics is responsible for ensuring each Representative fulfills the public trust inherent in the office and that they comply with the House's ethical standards. Therefore, we urge the Board to immediately investigate Representative Kahele for taking official action in violation of the conflict of interest rules and for abusing the proxy vote.

To the best of my knowledge and ability, all evidence submitted was not obtained in violation of any law, rule, or regulation. Further, I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

Sincerely,

/s/Kendra Arnold

Kendra Arnold  
Executive Director, Foundation for Accountability & Civic Trust

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COMMITTEE ON ARMED SERVICES  
SUBCOMMITTEE ON TACTICAL AIR AND LAND FORCES  
SUBCOMMITTEE ON READINESS

Congress of the United States  
House of Representatives  
Washington, DC 20515

April 4, 2022

Cheryl L. Johnson  
Clerk of the U.S. House of Representatives  
H-154 The Capitol  
Washington DC 20515

Dear Ms. Johnson

Pursuant to House Resolution 8, I write to notify you of the designation of a new proxy to cast my vote.

I continue to be unable to physically attend proceedings in the House Chamber due to the ongoing public health emergency and hereby grant the authority to cast my vote by proxy to the Honorable **Frank Mrvan (Indiana)**, who has agreed to serve as my proxy. I understand this revokes the prior grant of my proxy to the Honorable **Mark Takano (California)** previously authorized on March 31, 2022.

Sincerely

A handwritten signature in black ink, appearing to be 'K. Kahele'.

Kaiali'i Kahele  
Member of Congress