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November 2, 2018

Federal Election Commission  
1050 First Street, NE  
Washington, D.C. 20463

MUR # 7539

**Re: Campaign Finance Complaint Against Brill for Congress (C00664342) and David Brill, in his capacity as a federal candidate and as Treasurer of Brill for Congress**

To Whom It May Concern:

I write to call your attention to apparent violations of federal campaign finance laws by David Brill, the Democratic nominee for the office of United States Representative for the Fourth District of Arizona in the November 6, 2018 general election, and Brill for Congress, Brill's principal campaign committee (the "Committee"). As set forth below, there is reason to believe that Brill engaged in non-commercial air travel to conduct campaign activities, in direct contravention of the Federal Election Campaign Act, as amended by the Honest Leadership and Open Government Act of 2007 ("HLOGA"), and thereby accepted a prohibited or excessive contribution.

**FACTUAL BACKGROUND**

According to news accounts, Brill and David Garcia, the Democratic nominee for Governor of Arizona, recently embarked on a joint campaign tour through the Fourth District. Upon concluding a stop in Payson, Garcia and Brill reportedly prepared to "climb back aboard the single propeller Beech Bonanza A36 that has been loaned to the candidates, complete with a pilot for their two-day whirlwind tour — next stop Cottonwood." Pia Wyer, "Payson Flyby for David Garcia, Candidate for Governor; and Dr. David Brill, candidate for U.S. Congress," PAYSON ROUNDUP, Oct. 23, 2018, *available at* [https://www.paysonroundup.com/elections\\_2018/payson-flyby-for-david-garcia-candidate-for-governor-and-dr/article\\_07ff72b8-e4ca-5ec4-93e8-f930aec81768.html](https://www.paysonroundup.com/elections_2018/payson-flyby-for-david-garcia-candidate-for-governor-and-dr/article_07ff72b8-e4ca-5ec4-93e8-f930aec81768.html).<sup>1</sup>

**FECA VIOLATIONS**

**I. There is Reason to Believe Brill Engaged in Prohibited Non-Commercial Air Travel**

In enacting HLOGA, a multifaceted statute designed to enhance transparency and fortify the integrity of the political process, Congress imposed a near-categorical ban on the use of non-commercial air travel by candidates for the United States House of Representatives. *See* 52 U.S.C. § 30114(c)(2); 11 C.F.R. §§ 100.93(c)(2), 113.5(b). As the Commission explained in

<sup>1</sup> A copy of the referenced article is attached hereto as Exhibit A.

promulgating its corresponding regulations, the law broadly “prohibits House candidates, and individuals traveling on behalf of House candidates, their authorized committees or leadership PACs, from engaging in non-commercial<sup>2</sup> campaign travel on aircraft. This prohibition cannot be avoided by payments to the service provider, even by payments from the personal funds of a House candidate.” Explanation & Justification, Campaign Travel, 74 Fed. Reg. 63951-01, 63956 (Dec. 7, 2009).<sup>3</sup>

Here, the description of the aircraft as a single-engine plane that had been “loaned” to Brill, *see* Ex. A, underscores that it almost certainly was not a charter or other commercial flight. Further, Brill’s “barnstorming” tour of his prospective district to court voters and expound his policy positions bears the defining attributes of campaign activity. *See* MUR 6421 (In re Dan Benishek, *et al.*), Factual & Legal Analysis at 5-6 (finding reason to believe House candidate violated HLOGA when he used corporation’s private plane to attend home show, where he recounted that he had “met a lot of people, shook a lot of hands, saw a lot of constituents, and told them ‘where I stand on the issues.’”).

That Brill’s travel itinerary may have also included events unrelated to his campaign is irrelevant. As the Commission has explained, HLOGA’s injunction against non-commercial travel by House candidates “create[s] a bright-line test for any travel in connection with the candidate’s election,” which is “not altered or negated by a House candidate including some non-campaign activity on a trip involving campaign activity.” MUR 6394 (In re Pingree, *et al.*), Factual & Legal Analysis at 7-8 (finding reason to believe candidate’s fiancé made excessive contribution when he permitted her to travel aboard his company’s aircraft for a trip that included a campaign fundraiser, even though trip also included personal business and campaign activity did not result in additional travel costs). In short, Brill’s use of a private aircraft for campaign travel ineluctably violates HLOGA.

## **II. The Committee Accepted an Excessive or Prohibited In-Kind Contribution**

Even if the aircraft used by Brill were a commercial flight or otherwise exempt from HLOGA’s strictures, there remains reason to believe the Committee accepted a prohibited or excessive

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<sup>2</sup> “Commercial travel” is defined in relevant part as travel aboard “[a]n aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under Federal Aviation Administration air carrier safety rules.” 11 C.F.R. § 100.93(a)(3)(iv). Conversely, “non-commercial travel” is “travel aboard any conveyance that is not commercial travel.” *Id.* § 100.93(a)(3)(v).

<sup>3</sup> The expansive prohibition admits exceptions only for travel (1) on government-owned aircraft, (2) on aircraft that is personally owned or leased by the traveling candidate or his/her immediate family, or (3) for the benefit of someone other than the House candidate (*e.g.*, an related PAC or a political party committee). 52 U.S.C. § 30114(c)(2)(B), (c)(3)(A); 11 C.F.R. §§ 100.93(e), (g); 113.5(c). There is no evidence that any of these provisos is applicable in this matter. Press accounts impart the unmistakable impression that a principal—if not the sole—objective of Brill’s tour was to promote his own candidacy for federal office. *See* Ex. A.

contribution in the amount of the fair market value of the flight and piloting services. The FECA defines the term "contribution" capaciously to encompass "anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). Contributions include direct cash transfers but are not limited to such transactions; "loans" and "goods or services" furnished to a candidate or candidate committee "without charge or at a charge that is less than the usual and normal charge for such goods or services," likewise constitute "contributions" governed by source and amount limitations. 11 C.F.R. § 100.52(a), (d)(1).

Accordingly, a third party who subsidizes or supplies a commercial flight to a candidate for electioneering purposes makes a reportable contribution to the benefitted committee, unless the committee pays the full fair market value of the flight. See 11 C.F.R. §§ 100.93(b), 113.5(d); cf. MUR 6394, *supra*, Factual & Legal Analysis at 9; MUR 6863 (In re Alison for Kentucky, *et al.*), First General Counsel's Report at 8-12 (recommending investigation to determine whether candidate committee leased motor coach for less than the usual and normal charge, which would give rise to a prohibited in-kind corporate contribution). Similarly, a third party's payment of compensation to the plane's pilot for services rendered likewise engenders a contribution from the third party to the committee. See 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.52(d)(1).

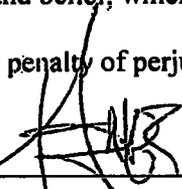
Assuming the aircraft used by Brill is owned, and the pilot is employed, by an individual, the fair market value ascribed to the Committee's use of the plane and the services of its pilot almost certainly exceeds \$2,700—the maximum amount that an individual may permissibly contribute to the Committee for the 2018 general election. See 52 U.S.C. § 30116(a)(1)(A), (c)(1)(B). Alternatively, if title to the plane is vested in, and/or the pilot is employed by, a corporation, limited liability company or labor union, such an entity is prohibited from making any direct or in-kind contribution to the Committee in any amount. See *id.* § 30118(a).

In sum, there is reason to believe that Brill utilized for campaign purposes a non-commercial aircraft owned or leased by a third party, in violation of 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2), 113.5(b). Alternatively, even if the plane constituted a commercial flight, there is reason to believe the Committee accepted an excessive or prohibited in-kind contribution in the form of the aircraft and piloting services in consideration of less than the full fair market value of such benefits, in violation of 52 U.S.C. §§ 30116(a)(1)(A), 30118(a) and 11 C.F.R. §§ 100.93(b), 113.5(d). I respectfully request that the Commission initiate an investigation and assess all appropriate civil penalties.

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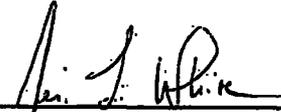
I know the allegations of this Complaint to be true, except the matters stated therein on information and belief, which I believe to be true.

Signed under penalty of perjury this 2 day of ~~October~~ <sup>NOVEMBER</sup>, 2018.

  
\_\_\_\_\_  
Jonathan Lines  
Chairman, Arizona Republican Party

3501 North 24<sup>th</sup> Street  
Phoenix, Arizona 85016

Subscribed and sworn to before me this 2nd day of <sup>November</sup>~~October~~, 2018.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



**Exhibit A**

FEATURED

## Payson flyby for David Garcia, candidate for governor; and Dr. David Brill, candidate for U.S. Congress

by Pia Wyer roundup staff writer Oct 23, 2018



David Garcia (left) is running for governor and Dr. David Brill (right) is running for the congressional seat now held by Rep. Paul Gosar.

Pia Wyer/Roundup

David Garcia, Democratic candidate for governor, and Dr. David Brill, Democratic candidate for U.S. Congress, flew into Payson Airport on Thursday afternoon as part of a two-day, 11 city Town Hall Barnstorm Listening Tour.

Rim Country supporters peppered the candidates with questions in an appearance that included a vow to make providing reliable high-speed Internet a top priority for Brill, running for Congress.

A university education professor and former state political analyst, Garcia is running against incumbent Gov. David Ducey, who has amassed an enormous financial advantage and a lead in pre-election polling. Garcia has centered his campaign on boosting education funding and a criticism of Gov. Ducey's support for taxpayer-funded vouchers for private schools. Gov. Ducey has stressed the impact of annual tax cuts on the state's booming economy and calls for tougher border security.

Dr. Brill is running against longtime Rep. Paul Gosar in a district with a big Republican registration advantage. A longtime physician and administrator at the Department of Veteran Affairs, Brill has stressed the expansion of medical care, supported the Affordable Care Act's coverage of pre-existing conditions and advocates letting people buy into Medicare to expand medical coverage. Rep. Gosar opposed the Affordable Care Act and advocates private insurance solutions, like selling insurance across state lines. A staunch supporter of President Trump, Rep. Gosar has pushed for the impeachment or indictment of top Justice Department officials for their pursuit of the investigation of Russian meddling in the U.S. elections.

## Bringing broadband to Payson

During their one-hour stopover in Payson, the two Democrats hit on some local issues.

Brill addressed the question of bringing reliable, redundant, high-speed Internet to Rim Country, which has been plagued by outages. Brill said, "I know that our congressman (Gosar) was in Payson a few months ago at a town hall and was asked 'Can you help us have high speed Internet here in Payson?' What our congressman said was 'It's not my job to help with high speed Internet in Payson, Arizona.' I absolutely agree with him, it's not his job — it's my job."

Brill continued, "I've had three small businesses, I love economic development and high speed Internet's absolutely necessary for the education of our children and for telemedicine for our senior citizens so they don't have to travel down to Phoenix to see a specialist every time. It's also extremely important for job creation and business development in rural areas. I support leveling the playing field between rural and urban areas. Everything is harder in rural areas, more expensive, from post offices to roads to broadband to everything else."

Both candidates agreed neither party has a monopoly on good ideas and urged a more bipartisan approach.

Garcia said, "The closer we get to parity, the better both sides talk to each other, the better off the state is going to be. In my opinion, a supermajority is dangerous on either side because you don't have to meaningfully include the minority party. Americans are done with ideology, they want folks who are going to bring solutions."

## Providing Medicare buy-in

Brill criticized proposals to reduce Medicare and Medicaid coverage for special needs children and others. "It's simple, we can't let them lose it. We are the richest country on the planet and when we as Americans work together there's simply nothing that we can't do."

Brill also advocated expanded services for people in need, like the mentally ill or the homeless. The Affordable Care Act required insurance plans to include mental health benefits.

"I've been working at the VA for over 10 years with veterans. Homelessness is a big problem for us and I have to say part of it is mental health, part of it is medications, not having good jobs, and the ability to fend for your family."

On the topic of border security, Garcia, a veteran, said, "I am against Trump's wall, but I took an oath at 17 to defend this country and I'm going to take it with me to the governor's office. I will continue to be critical of ICE as long as they separate children from their families at the border. I stand with our dreamers, talented young people, working hard to contribute to the only country they know."

Gov. Ducey has sharply criticized Garcia for remarks to various groups that called for the complete overhaul of ICE and sharply criticized the Trump administration's plan to build a wall along the entire U.S.-Mexico border.

Brill said, "We need border security, but we do it with segments of walls. They do make sense in certain areas together with electronic surveillance to keep our ranchers and our border patrol safe. This is going to be a problem until we do two things 1) separate the criminals from refugees, and 2) solve the problem of labor supply and demand. As long as we have an imbalance there, we will have criminal elements who take advantage of it."

Garcia was asked how he would finance his call for major increases in education funding. He advocated several approaches including cutting spending in other areas, sharply reducing tax credits for private schools, reducing corporate tax credits for corporations and reducing exemptions from sales taxes for

many businesses and products.

"We're going to take a look at those and ask ourselves is it still in the best interest of Arizona that we have them or should those dollars go to the general fund. This is where taking no money from lobbyists matters because I won't owe anybody a thing when we go in there and take a look at those decisions."

Brill also advocated reforms to require the disclosure of any "dark money" political spending by corporations and individuals. Following the question and answer session, people lined up to speak with both candidates, some took photos. Before long it was time for them to climb back aboard the single propeller Beech Bonanza A36 that has been loaned to the candidates, complete with a pilot for their two-day whirlwind tour — next stop Cottonwood.

Brill will be returning to Payson today for a panel discussion at the Payson Senior Center at 7 p.m. focused on how climate change might affect Rim Country.

Contact [piwyer@payson.com](mailto:piwyer@payson.com)

**Pia Wyer**

Digital Media Mgr/Photo Editor/Staff Writer

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