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**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6421  
DATE COMPLAINT FILED: 11/2/10  
DATE OF NOTIFICATION: 11/4/10  
LAST RESPONSE RECEIVED: 11/26/10  
DATE ACTIVATED: 12/15/10

EXPIRATION OF SOL: 3/1/15 - 4/10/15

COMPLAINANT: Michigan Democratic State Central Committee

RESPONDENTS: Dan Benishek  
Benishek for Congress and Joseph A. Shubat, in his  
official capacity as treasurer  
Steven P. Zurcher  
St. George Glass and Window Co., Inc.

RELEVANT STATUTES  
AND REGULATIONS: 2 U.S.C. § 439a(c)(2)  
2 U.S.C. § 441b  
11 C.F.R. § 100.93(c)(2)  
11 C.F.R. § 113.5(b)  
11 C.F.R. § 114.2(e)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

**I. INTRODUCTION**

The complaint alleges that in 2010, Representative Dan Benishek took at least two flights on non-commercial aircraft while campaigning in Michigan, thereby violating the ban on such travel by House candidates. Based on information in the complaint, the responses, and publicly available information, we recommend that the Commission find reason to believe Benishek violated 11 C.F.R. § 100.93(c)(2) by traveling on non-commercial aircraft in connection with an election for federal office, and Benishek and his authorized committee violated 2 U.S.C.

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1 § 439a(c) and 11 C.F.R. § 113.5(b) by accepting a prohibited in-kind contribution in the form of  
2 non-commercial aircraft travel by flying at least once to a campaign event on an airplane flown  
3 by Steven Zurcher and owned by Zurcher's company, the St. George Glass and Window Co.,  
4 Inc. We also recommend that the Commission find reason to believe Zurcher and his  
5 corporation made, and Benishek and the Committee knowingly accepted, a prohibited in-kind  
6 corporate contribution in violation of 2 U.S.C. § 441b. Finally, we recommend that the  
7 Commission authorize a limited investigation to determine and confirm facts regarding the  
8 flights Benishek and the Committee refer to in their response, and the costs of any such flights.

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. FACTUAL BACKGROUND**

11 **1. Facts from Complaint and Responses**

12 In 2010, federal candidate Dan Benishek sought Michigan's 1<sup>st</sup> District House seat, filing  
13 his Statement of Candidacy on February 12, 2010. The First District constitutes Michigan's  
14 Upper Peninsula and a portion of Northern Michigan. Benishek for Congress and Joseph A.  
15 Shubat, in his official capacity as treasurer ("Committee"), also filed its Statement of  
16 Organization on February 12, 2010.

17 The complaint bases its allegation on an October 2010 newspaper article (attached to the  
18 complaint) noting that Benishek for Congress posted a photograph of an airplane on a runway on  
19 the Benishek for Congress Facebook page, with the caption, "Headed out to the Home Show in  
20 Munising. See ya there!" See Complaint at 3; see also Facebook Page, Attachment 1.

21 According to the article, St. George Glass and Window in Iron Mountain, Michigan, owns the  
22 airplane. Brandon Hubbard, *Petoskey News-Review*, "Stupak-seat race: Dems accuse Benishek

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1 of unclaimed plane rides; GOP says Dems backing Wilson as spoiler," October 26, 2010. Steven  
2 Zurcher, the company's owner, did not respond to a reporter's request for comment. *Id.*

3 The Committee reportedly acknowledged that since March 2010, Benishek had taken two  
4 flights that "although arguably personal in nature, may need to be reimbursed at a commercial  
5 charter rate."<sup>1</sup> *Id.*; complaint at 2. The complaint, thus, alleges that Benishek "has repeatedly  
6 violated" the Commission's non-commercial aircraft travel prohibition.

7 In response to the complaint, Benishek and the Committee state that "on two isolated  
8 occasions," Benishek flew with Zurcher, his longtime friend, in Zurcher's private two-passenger  
9 plane to "Political Party" events. Benishek and Committee Response ("Benishek Response") at  
10 1-2. Benishek and the Committee state that the events were not sponsored or affiliated with the  
11 Benishek campaign. *Id.* at 2. The Committee's 2010 Post-General disclosure report, filed  
12 December 2, however, reveals a \$2,250 disbursement on October 21 to Zurcher for "Travel."

13 Zurcher and St. George Glass and Window responded to the complaint by stating that  
14 Zurcher has no knowledge or record of "campaign flights" with Benishek. *See* Zurcher  
15 Response at 1. Zurcher also stated that the Commission has no "jurisdiction restricting personal  
16 travel," he has never flown to Munising, and the Munising airport was closed when the Munising  
17 Home Show took place on April 10, 2010. *Id.*

## 18 2. Other Publicly Available Information

19 The Benishek campaign posted videos on YouTube including ads, news media  
20 interviews, speeches, and direct "talks" by Benishek about his campaign travels. *See*  
21 Benishek2010's YouTube Channel, *available at* <http://www.youtube.com/user/Benishek2010>,  
22 and Benishek4congress YouTube Channel (accessible directly from the Committee's Facebook

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<sup>1</sup> Because House candidates are prohibited from using non-commercial aircraft travel when flying as "campaign travelers," *see* pp. 4-5, reimbursement would not be allowed.

1 page). One video, dated April 11, 2010, and entitled, "Dr. Dan Benishek talks about his day  
2 after attending the Munising Home Show," available at <http://goo.gl/DukKK>, includes the  
3 following caption: "On April 10, 2010, congressional candidate Dr. Dan Benishek attended Tea  
4 Party Express events in Cheboygan and Petoskey, MI. After those busy events, Dan was flown  
5 out to Munising, MI to make an appearance at the Munising Home Show. After the event, Dan  
6 tells us about the busy day ..." (emphasis added). In the video, Benishek talks about his  
7 weekend, which included going to Tea Party events, and then states:

8 and then we came back up to Munising to do the home show. So  
9 we got to shake a lot of people's hands and to see a lot of the  
10 constituents, and meet a lot of people and tell them where I  
11 stand on the issues. ... We've certainly had a busy weekend.  
12 We've put over 1,500 miles on the car, and a little flying as well.  
13 And so we appreciate your continued support and we'll see you  
14 next time on the trail.

15  
16 (emphasis added).

17 Other videos from Benishek2010's (YouTube) Channel show Benishek making  
18 campaign speeches at "Tea Party Express" events. See April 9, 2010, video entitled "Dr. Dan  
19 Benishek speaks on the Tea Party Express about his 2010 campaign," available at  
20 <http://goo.gl/oSPps>, and April 17, 2010, video entitled "Dr. Dan Benishek at the Houghton Tea  
21 Party," available at <http://goo.gl/ohDpO>. See also Dionne Harris, "Tea Party rolls into Esby,"  
22 Daily Press, April 10, 2010 ("Also speaking out Friday was Congressional candidate Dan  
23 Benishek, who agreed with what was being said.").

24 **B. Legal Analysis**

25 The Honest Leadership and Open Government Act of 2007 ("HLOGA"), which became  
26 effective on Sept. 14, 2007, revised the Federal Election Campaign Act of 1971, as amended  
27 ("the Act"), by prohibiting House candidates from making expenditures for non-commercial

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1 aircraft travel. 2 U.S.C. § 439a(c)(2). The Commission promulgated implementing regulations  
2 that became effective Jan. 6, 2010. See Explanation and Justification, 74 Fed. Reg. 63951  
3 (Dec. 7, 2009). The regulations provide that House candidates are prohibited from non-  
4 commercial air travel on behalf of any such candidate or any authorized committee of such  
5 candidate, 11 C.F.R. § 100.93(c)(2), and from accepting in-kind contributions in the form of non-  
6 commercial air travel. 11 C.F.R. § 113.5(b).<sup>2</sup>

7 The prohibition applies to a House candidate who is a "campaign traveler," which  
8 includes, "any candidate traveling in connection with an election for Federal office or any  
9 individual traveling in connection with an election for Federal office on behalf of a candidate or  
10 political committee." 11 C.F.R. § 100.93(a)(3)(i)(A).

11 Further, the Act prohibits corporations from making any contribution in connection with  
12 a federal election, and prohibits candidates and committees from knowingly accepting such  
13 contributions. 2 U.S.C. § 441b. "Contribution" includes any gift, subscription, loan, advance, or  
14 deposit of money or anything of value made by any person for the purpose of influencing any  
15 election for federal office. 2 U.S.C. § 431(8). In addition, the Commission's regulations  
16 prohibit officers from consenting to the making of a contribution by the corporation. 2 U.S.C.  
17 § 441b and 11 C.F.R. § 114.2(e).

18 1. **Benishek flew on non-commercial aircraft in connection with his**  
19 **federal election**  
20

21 Benishek and the Committee assert that "Benishek has never used a private plane for  
22 purposes of 'campaign travel' 'on behalf of' his own campaign. On the contrary, Benishek has  
23 only accepted invitations for personal travel from a close friend to attend Party-related events

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<sup>2</sup> There are two exceptions to the ban on non-commercial aircraft travel for House candidates that are not relevant here: travel on government-operated aircraft and aircraft owned by the candidate or members of the candidate's immediate family. See 11 C.F.R. §§ 100.93(e) and (g), 113.5(c).

1 unaffiliated with the Benishek campaign." Benishek Response at 2 (emphasis in original). They  
2 conclude that Benishek is not a "campaign traveler" under the Commission's rules. *Id.*

3 The available information suggests, however, that Benishek took a prohibited non-  
4 commercial flight to campaign at the Munising Home Show. On April 10, 2010, the day of the  
5 Munising Home Show, the Committee posted on its Facebook page a photograph of a small  
6 airplane on a runway, with the caption, "Headed out to the Home Show in Munising. See ya  
7 there!" See Attachment 1. Such a photograph and description indicate that Benishek used air  
8 transportation to attend the event.

9 Further, a Benishek2010's YouTube Channel video includes a caption noting that the  
10 candidate flew to Munising "to make an appearance at the Munising Home Show." See April 11,  
11 2010, video entitled "Dr. Dan Benishek talks about his day after attending the Munising Home  
12 Show," available at <http://goo.gl/DukKK>. In the accompanying video, Benishek states he went  
13 to Munising "to do the Home Show." *Id.* He then recounts that he met a lot of people, shook a  
14 lot of hands, saw a lot of constituents, and told them "where I stand on the issues." *Id.* These  
15 activities appear to constitute campaigning. He also acknowledged in the same video that he did  
16 "a little flying." Thus, Benishek meets the definition of a campaign traveler because he flew to  
17 the Munising Home Show in connection with his election for federal office.

18 It appears that St. George Glass and Window, a Michigan corporation, provided the plane  
19 that transported Benishek to the Munising Home Show. As noted above, the complaint includes  
20 an article reporting that the registration of the plane posted on the Benishek Facebook page  
21 identifies St. George Glass and Window as the owner of the aircraft. Zurcher, the owner and  
22 president of the corporation, denies flying Benishek to Munising, stating that the airport was  
23 closed at the time. Zurcher's denial, however, does not foreclose the possibility that he flew

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1 Benishek to somewhere close to Munising. In fact, although the Munising airport, Hanley Field  
2 Airport, appears to close for the winter, from November through May, there is another airport  
3 45 minutes away in Marquette, Michigan, that is open year-round. See <http://goo.gl/xJNsp>.

4 Additionally, the available information indicates that, contrary to Benishek's assertions,  
5 Benishek did campaign at "party-related events." The aforementioned April 9 and 17, 2010,  
6 videos of Benishek at Tea Party Express events in Escanaba and Houghton, respectively, show  
7 him giving campaign speeches (Escanaba – "I'm Dan Benishek, a general surgeon, and I'm  
8 running for Congress because enough is enough!"); (Houghton – "Hi. I'm Dan Benishek, and  
9 I'm running for Congress."). Benishek's response acknowledges that he took two flights on  
10 Zurcher's plane to "party-related events" but does not identify the events in question or disclose  
11 any further information. Likewise, Zurcher also denies flying him on any "campaign flight" but  
12 does not elaborate.

13 Based on the foregoing, it appears that at a minimum, Benishek flew to Munising on a  
14 non-commercial airplane in connection with his campaign.<sup>3</sup> Therefore, we recommend that the  
15 Commission find reason to believe that Dan Benishek violated 11 C.F.R. § 100.93(c)(2) by  
16 traveling on non-commercial aircraft, and Dan Benishek and Benishek for Congress and Joseph  
17 A. Shubat, in his official capacity as treasurer, violated 2 U.S.C. § 439a(c)(2) and 11 C.F.R.  
18 § 113.5(b) by accepting a prohibited in-kind contribution in the form of non-commercial aircraft  
19 travel.

<sup>3</sup> Immediately after concluding that Benishek was not a "campaign traveler," Benishek and the Committee argue that assuming he were a campaign traveler, a party committee could have paid the cost of the airfare. The available information does not suggest that a party committee did so or that Benishek was traveling on behalf of a party committee. See 11 C.F.R. § 100.93(c)(3).

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2. St. George Glass and Window made a prohibited contribution

The available information indicates that St. George Glass and Window made a prohibited corporate in-kind contribution by permitting House candidate Benishek to fly to the Munising area in the corporation's airplane so that he could make an appearance at the Munising Home Show. It further appears that Zurcher, the corporation's owner and president, consented to the corporation's contribution, as he piloted the plane, and thereby, violated the Act. Therefore, we recommend that the Commission find reason to believe that St. George Window and Glass Co., Inc., violated 2 U.S.C. § 441b by making a prohibited corporate in-kind contribution in the form of non-commercial aircraft travel, and that Steven P. Zurcher violated 2 U.S.C. § 441b by consenting to St. George Window and Glass Co., Inc., making the prohibited contribution.<sup>4</sup> We also recommend that the Commission find reason to believe that Dan Benishek and Benishek for Congress and Joseph A. Shubat, in his official capacity as treasurer, violated 2 U.S.C. § 441b by knowingly accepting a prohibited in-kind corporate contribution.

III. INVESTIGATION

There is insufficient information to proceed directly to pre-probable cause conciliation. As noted, the Committee reportedly acknowledged that Benishek had taken two flights that "may need to be reimbursed at a commercial charter rate." Brandon Hubbard, *Petaskey News-Review*, "Stupak-sent case: Dems accuse Benishek of unclaimed plane rides; GOP says Dems backing Wilson as spoiler," October 26, 2010. In response to the complaint, Benishek and the Committee state that "on two isolated occasions," Benishek flew with Zurcher to "Political Party" events but deny that Benishek was a "campaign traveler" on either. However, the

<sup>4</sup> We considered whether Zurcher meets the definition of "campaign traveler" but believe, as the pilot, he was not traveling "on behalf" of Benishek. There is no information at this point that he took part in any campaign activities. If new information surfaces during the investigation, we will revise our recommendations accordingly.

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1 response does not clarify whether the two flights referenced in the news article (attached to the  
2 complaint) and the flights "on two isolated incidents" were the same and whether they include  
3 the flight to Munising. The response does not specifically describe the events in question and  
4 Benishek's participation in them.

5  
6  
7  
8  
9 We intend to conduct the investigation through informal means, but  
10 we request authority to use compulsory process if it becomes necessary, and we note that in his  
11 response, Zurcher states that he "will not comment on personal travel for any of my passengers  
12 without a direct court order."

13 **IV. RECOMMENDATIONS**

- 14 1. Find reason to believe that Dan Benishek violated 2 U.S.C. §§ 439a(c)(2), 441b  
15 and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b).  
16  
17 2. Find reason to believe that Benishek for Congress and Joseph A. Shubat, in his  
18 official capacity as treasurer, violated 2 U.S.C. §§ 439a(c)(2), 441b and  
19 11 C.F.R. § 113.5(b).  
20  
21 3. Find reason to believe that St. George Glass and Window Co., Inc., violated  
22 2 U.S.C. § 441b.  
23  
24 4. Find reason to believe that Steven P. Zurcher violated 2 U.S.C. § 441b.  
25  
26 5. Approve the attached Factual and Legal Analyses.  
27  
28 6. Authorize the use of compulsory process as to all respondents and witnesses in  
29 this matter, including the issuance of appropriate interrogatories, document  
30 subpoenas, and deposition subpoenas, as necessary.

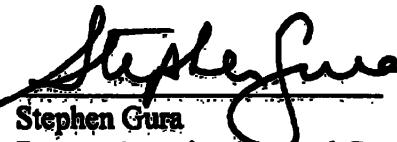
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7. Approve the appropriate letters.

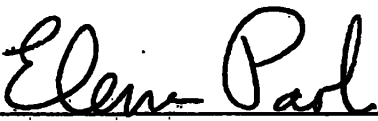
Christopher Hughey  
Acting General Counsel

3/15/11  
Date

BY:

  
Stephen Gura  
Deputy Associate General Counsel for  
Enforcement

  
Roy Q. Lockett  
Acting Assistant General Counsel

  
Elena Paoli  
Attorney

Attachments:

1. Benishek for Congress Facebook screen shot

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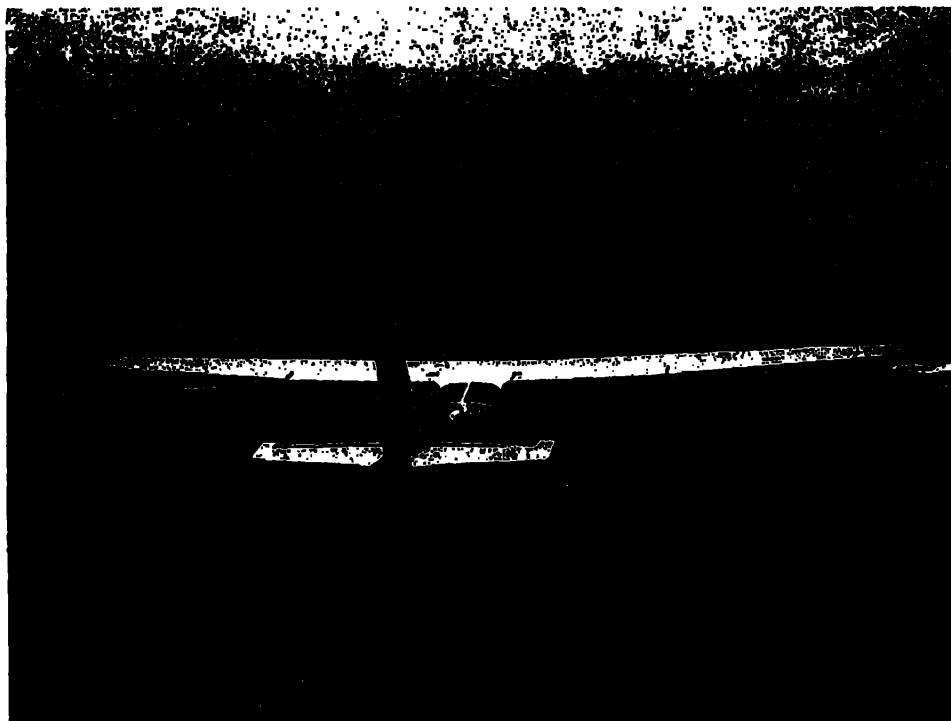
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## Benishek for Congress's Photos - Wall Photos

Photo 3 of 11 [Back to Album](#) · [Benishek for Congress's Photos](#) · [Benishek for Congress's Profile](#)[Previous](#) [Next](#)

Headed out to the Home Show in Munking. See ya there!

Added April 10, 2010 · [Like](#) · [Comment](#)

Mark Murphy and Thomas J. Dolasko IV like this.

Thomas J. Dolasko IV Just left Munking for CO then AZ. Enjoy!  
April 20, 2010 at 9:25amJason Asselin I won't say what Steven was thinking on his way to  
pick you up...lol  
April 11, 2010 at 10:10pmFrom the album:  
Wall Photos by Benishek for  
CongressAttachment  
Page 1 of 1