



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AUG 10 2011

**BY E-MAIL (Tal@paperconverter.com)**  
**and CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Tal Cloud  
2822 S. Maple  
Fresno, CA 93725

RE: MURs 6289, 6362

Dear Mr. Cloud:

The Federal Election Commission has considered the allegations contained in the complaint, designated as MUR 6362, you submitted on August 31, 2010. The Commission merged MUR 6289 into MUR 6362.

The Commission found, on the basis of the information provided in the complaint and information provided by respondents, that there is: no reason to believe Jeff Denham violated 2 U.S.C. § 441b(a); no reason to believe Denham for Congress and David Bauer, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a); and no reason to believe Remembering the Brave Foundation violated 2 U.S.C. § 441b(a). The Commission also found no reason to believe that the Picayune Rancheria of the Chukchansi Indians/Chukchansi Tribal Government, Californians for Fiscally Conservative Leadership, Gilliard Blanning & Associates, Inc., David Gilliard, and Carlos Rodriguez violated any provisions of the Federal Election Campaign Act of 1971 ("the Act") or Commission regulations in connection with the allegations in this matter. Finally, the Commission considered other allegations contained in the complaint, but was equally divided on whether to find reason to believe that Remembering the Brave Foundation violated 2 U.S.C. §§ 434(f) and 441d, and that Jeff Denham, Jeff Denham for State Senate and David Bauer, in his official capacity as treasurer, and Denham for Congress and David Bauer, in his official capacity as treasurer violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). Accordingly, on August 2, 2011, the Commission closed the file in this matter.

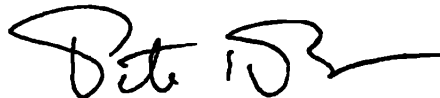
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's no reason to believe findings, are enclosed for your information. One or more Statements of Reasons

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providing a basis for the Commission's decision regarding the other allegations will follow.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Blumberg", with a long horizontal flourish extending to the right.

Peter G. Blumberg  
Assistant General Counsel

Enclosures  
Factual and Legal Analyses

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Jeff Denham**

**MUR: 6362**

Denham for Congress  
and David Bauer, in his official capacity as treasurer

**I. INTRODUCTION**

This matter was generated by two complaints filed with the Federal Election Commission ("the Commission"), one by Sean Fox and another by Tal Cloud and Mike Der Manouel, Jr., which were designated as MURs 6289 and 6362, respectively. *See* 2 U.S.C. § 437(g)(a)(1). The complaints concern ads broadcast by Remembering the Brave Foundation ("RB"), a section 501(c)(3) charitable organization, to promote a May 28, 2010, benefit concert in support of a program in California to create specialized license plates for families of military personnel killed on active duty. The ads featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. The concert was held at the Chukchansi Gold Resort & Casino.

The complaints in these two matters involve allegations that the radio and television advertisements promoting the concert were electioneering communications that were coordinated with Denham for Congress and David Bauer, in his official capacity as treasurer ("Federal Committee") and were not disclosed to the Federal Election Commission ("the Commission"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Complainants in MUR 6362 also alleged that the advertisements were financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB.

1 Respondents stated that RB, not the Tribe, paid for the advertisements and asserted that  
2 no violations of the Act occurred because the advertisements do not contain express advocacy or  
3 its functional equivalent.

4 It appears that the radio and television ads at issue meet the definition of "coordinated  
5 communications," but qualify for the safe harbor for candidate charitable solicitations under  
6 11 C.F.R. § 109.21(g) because: (1) the ads do not promote, support, attack, or oppose ("PASO")  
7 Denham or any other Federal candidate(s); (2) RB, the organization for which the funds were  
8 solicited, is a 501(c)(3) tax-exempt organization as described at 11 C.F.R. § 300.65; and (3) the  
9 funds appeared to have been raised solely for charitable purposes, *i.e.*, donations to RB, a  
10 501(c)(3) organization, to benefit the Gold Star Project. Accordingly, the Commission found no  
11 reason to believe that Jeff Denham and Denham for Congress and David Bauer, in his official  
12 capacity as treasurer, accepted and received prohibited in-kind corporate contributions resulting  
13 from coordinated communications in violation of 2 U.S.C. § 441b(a); and no reason to believe  
14 that Denham for Congress and David Bauer, in his official capacity as treasurer, failed to report  
15 such contributions in violation of 2 U.S.C. § 434(b).

16 The Commission considered the allegations that the advertisements were financed from  
17 funds Denham transferred from his State Committee to RB, but was equally divided on whether  
18 to find reason to believe that Jeff Denham and Denham for Congress and David Bauer, in his  
19 official capacity as Treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) in  
20 connection with the transfer of non-federal funds to finance electioneering communications.  
21 The Commission will issue one or more Statements of Reasons setting forth the basis for the  
22 decision as to these allegations.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2  
3 **A. Factual Background**

4  
5 In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup> District,  
6 and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup> Congressional  
7 District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,  
8 Republican primary and the November 2, 2010, general election.

9 In the two months before the June 8 primary, Denham's State Committee made transfers  
10 totaling \$225,000 to RB, an entity organized under Section 501(c)(3) of the Internal Revenue  
11 Code (26 U.S.C. § 501(c)(3)). RB honors veterans killed in action, and it organizes ceremonies  
12 and events to honor deceased servicemembers and their families. See  
13 <http://www.rememberingthebrave.org>. The transfers included a \$25,000 donation made on April  
14 12, 2010, and three loans, which the Committee forgave: a \$100,000 loan made on April 19,  
15 2010, a \$50,000 loan made on May 12, 2010, and a \$50,000 loan on May 25, 2010.<sup>1</sup>

16 Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold  
17 Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup> Congressional District. The  
18 concert, sponsored by RB and featuring country and western music performer Phil Vassar, was  
19 advertised on radio, television, and the internet as a benefit concert to raise donations for Project  
20 Gold Star—a program administered by the California Department of Veteran Affairs to raise  
21 private donations to pay the costs of a specialized license plate program for the families of U.S.  
22 military personnel killed while serving on active duty. Several of the advertisements promoting  
23 the concert featured Denham. RB asked Denham to act as spokesperson and to appear in the ads

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<sup>1</sup> See <http://cal-access.sos.ca.gov/PDFGen/pdfgen.pr?filingid=1521503&amendid=0> and <http://cal-access.sos.ca.gov/PDFGen/pdfgen.pr?filingid=1568050&amendid=0>.

1 because of his "long-standing association with veterans' issues and the Gold Star Project  
2 legislation." Denham Response at 2. Denham, an Air Force veteran, was Chairman of the  
3 Veterans' Affairs Committee while he was a California State Senator and was a coauthor of  
4 Senate Bill 1455, the California Gold Star Family License Plate bill. Project Gold Star was  
5 signed into law in September 2008.

6 Complainant in MUR 6289 provided a "Transcript of Coordinated Ads," which contains  
7 a link to the television ad as posted on the internet at <http://www.rememberthebrave.com/>, a  
8 transcript of the radio ad, and a list of seven TV and radio stations that aired the ads. The ads  
9 aired in May 2010, up to the date of the event.

10 **TRANSCRIPT OF RADIO AD:**

11 **ANNOUNCER:** Join country superstar Phil Vassar for a one-night Remember  
12 the Brave benefit concert, Friday May 28<sup>th</sup> Memorial weekend at Chukchansi  
13 Gold Resort and Casino. Veteran Affairs Committee Chairman Senator Jeff  
14 Denham.

15  
16 **JEFF DENHAM:** As a veteran, I know the sacrifices of our servicemen and  
17 women, and the sacrifice shared by their loved ones who pray for their safe return.  
18 But some of them don't make it, their families then become Gold Star families.  
19 This event will raise funds for Gold Star families and the Gold Star project as  
20 recognition for their ultimate sacrifice. Please join us at our benefit concert on  
21 May 28<sup>th</sup> Memorial weekend. If you can't make it, go to Remember the Brave  
22 dot com to learn more and to make your tax-deductible donations. Remember,  
23 every dollar counts.

24  
25 I'm Senator Jeff Denham.

26  
27 **ANNOUNCER:** Join Phil Vassar and Jeff Denham at the Remember the Brave  
28 benefit concert. For tickets go to Chukchansi Gold Resort and Casino or visit  
29 Ticketmaster dot com.  
30

**TRANSCRIPT OF TELEVISION AD (as posted on the internet) :**

<http://www.rememberthebrave.com/>

PAGE 1: At top of page is the logo of Remembering the Brave, followed by Benefit Concert. Underneath it is "Phil Vassar" followed by the date (May 28<sup>th</sup>) and location of the event (Chukchansi Gold Resort & Casino), a photo of a sample specialized license plate next to a statement: "Proceeds benefit the California Department of Veteran Affairs Project Gold Star, a link to the California Department of Veteran Affairs website, and two buttons: "Buy Tickets" and "Donate."

PAGE 2: (Video)(30 seconds):

- **First clip:** Phil Vassar live concert and a voiceover "Join country superstar Phil Vassar for a one night benefit concert" while the following words flash on the screen "Remember the Brave" "Chukchansi Gold Resort and Casino" and "May 28<sup>th</sup>".
- **Second clip:** Denham with 3 other individuals, two of whom appear to be veterans. Denham is standing in the middle of the group while the words "Senator Jeff Denham, Chairman, Veterans Affairs" flash on the screen. Denham then says "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families."
- **Third clip:** Phil Vassar concert and a voiceover "Join Phil Vassar at the Remember the Brave benefit concert. Visit Ticketmaster dot com for your tickets today" while the words "May 28<sup>th</sup>" "Chukchansi Gold Resort and Casino" and "Ticketmaster.com" flash on the screen.
- **Fourth clip:** same shot of Denham with the veterans and Denham saying "If you can't make it, go to Rememberthebrave.com to learn more" while the words "Rememberthebrave.com" flash on the screen.

**TRANSCRIPT OF INTERNET AD:**

- **Left side of screen:** Photo of Denham and the words "State Senator Jeff Denham, Veterans' Affairs Committee" under the photo.
- **Right Side of screen:** Message "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families. We're raising funds to make available commemorative license plates for these families as recognition for their sacrifice. Please join us at our benefit concert on May 28<sup>th</sup>. If you can't attend, I urge you to learn more [link] about these families and make a tax-deductible contribution [link]. Remember, every dollar counts. Learn More: California Department of Veteran Affairs – Project Gold Star [link].
- **Bottom of screen:** rememberthebrave.com is a project of Remembering The Brave Foundation, a 501(c)(3) not-for-profit organization. For more information,

1                   please visit [www.RememberingTheBrave.org](http://www.RememberingTheBrave.org). Contributions and donations are  
2                   tax deductible and directly benefit the Remembering the Brave Foundation.  
3

4                   RB sponsored the benefit concert, the proceeds of which were donated to Project Gold  
5                   Star. Denham Response at 2. It also appears that RB, not the Tribe, produced, aired, and paid  
6                   for the radio, television, and internet ads. *Id.* Documentation submitted with the complaint in  
7                   MUR 6362 indicates that Gilliard, Blanning & Associates ("GBA") and Alamance Advisors  
8                   handled the media buy for the concert on behalf of its client, RB. *See* Emails between Genet  
9                   Slagle (media buyer with GBA) to Matt Rosenfeld (President/General Manager for KSEE-  
10                  NBC24, KSEE Weather Plus, and LATV la alternativo), dated April 29, 2010, regarding Gold  
11                  Star Families Proposal. It also appears that GBA and Alamance Advisors handled the media  
12                  buys for the Denham for Congress campaign in 2010.<sup>2</sup> *See* Emails from Genet Slagle to Donald  
13                  Osika, dated January 29, 2010. The Denham response did not specify how much was spent on  
14                  the ads, but does not dispute the \$100,000-\$200,000 amount mentioned in the complaint. It  
15                  appears that RB raised a total of \$105,440.24, about a third of the total amount raised (\$300,000)  
16                  for Project Gold Star.<sup>3</sup>

17                  The response indicates that the ads aired during May 2010, up until the May 28<sup>th</sup> date of  
18                  the benefit concert, which was within thirty (30) days of the California Congressional primary  
19                  election in which Denham appeared as a candidate. *Id.* at 4. However, the response argued the

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<sup>2</sup> The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA and to Alamance for broadcast advertising.

<sup>3</sup> The California Department of Veteran Affairs announced that Project Gold Star had met its fundraising goal. *See* <http://www.cdva.ca.gov/newhome.aspx>. RB posted a letter from the Department of Veteran Affairs thanking it for its \$105,440.24 donation in support of Project Gold Star. *See* <http://www.rememberingthebrave.org/news/>. On the letter is a handwritten note, indicating that this was the single largest donation received. *Id.* In a news release announcing that the Gold Star Project had raised \$300,000 and that the Gold Star plate initiative had passed, RB acknowledges that it "together with Senator Denham, his supporters, and other contributors ... raised approximately one-third of the funds needed to get the license plate initiative passed." *Id.*



1 concert was scheduled for May 28<sup>th</sup> because it was close to Memorial Day, an appropriate date  
2 on which to hold an event related to veteran/military issues and causes, and not because May 28  
3 was close to the primary. *Id.* at 6. The response also stated that the ads aired over a geographic  
4 area around the Casino where the concert was held and included Denham's State Senate district,  
5 the 19<sup>th</sup> Congressional District, and areas beyond. *Id.* at 4. Finally, the response acknowledged  
6 that the ads could be received by more than 50,000 people within the 19<sup>th</sup> Congressional District.  
7 *Id.*

8 **B. Coordinated Communications**

9  
10 The Act subjects contributions and expenditures to certain restrictions, limitations, and  
11 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary  
12 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,  
13 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized  
14 political committees, or their agents," and are subject to the same restrictions and reporting  
15 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.  
16 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that  
17 coordinated communications constitute in-kind contributions from the party paying for such  
18 communications to the candidate, the candidate's authorized committee, or the political party  
19 committee which coordinates the communication. A corporation is prohibited from making any  
20 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

21 A communication is coordinated if it is paid for by someone other than the candidate or  
22 the candidate's authorized committee (or the political party committee, where applicable); it  
23 satisfies one or more content standards; and it satisfies one or more conduct standards. All three  
24 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21. The

1 Commission's regulations exempt from the definition of "coordinated communication" a public  
2 communication in which a Federal candidate solicits funds for organizations as permitted by  
3 11 C.F.R. § 300.65, provided that the public communication does not PASO the soliciting  
4 candidate or that candidate's opponent(s) in the election. *See* 11 C.F.R § 109.21(g)(2). Federal  
5 candidates and officeholders may solicit funds for tax-exempt organizations as described in  
6 26 U.S.C. § 501(c). 11 C.F.R. § 300.65.

7 The radio and television ads at issue meet all three prongs of the coordination test. The  
8 payment prong is satisfied because there is information that the ads were paid for by RB,  
9 someone other than the candidate, his authorized committee, or political party committee.  
10 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the communications qualify as  
11 public communications which "refer[ ] to a clearly identified House or Senate candidate that  
12 [are] publicly distributed or otherwise publicly disseminated in the clearly identified candidate's  
13 jurisdiction 90 days or fewer before the ...primary or preference election."<sup>4</sup> 11 C.F.R.  
14 § 109.21(c)(4)(i). The content prong is also satisfied because the ads meet the definition of  
15 electioneering communications. 11 C.F.R. § 109.21(c)(1). The ads are electioneering  
16 communications because they were publicly distributed on radio and television, refer to a clearly  
17 identified candidate for Federal office, were publicly distributed within 30 days before the  
18 primary election, and were targeted to the relevant electorate (the ads could be received by

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<sup>4</sup> A public communication includes broadcast communications. 2 U.S.C. § 431(22). It does not include internet communications, except for communications placed for a fee on another's Web site. 11 C.F.R. § 100.26. "Clearly identified" means the candidate's name or photograph appears, or "the identity of the candidate is otherwise apparent through an unambiguous reference." 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

1 50,000 or more persons in the district that Denham sought to represent (19<sup>th</sup> Congressional  
2 District)).<sup>5</sup> 11 C.F.R. § 100.29.

3 The conduct prong is satisfied if a candidate or candidate's committee assents to a request  
4 or suggestion that the public communication be created, produced, or distributed, and that  
5 request or suggestion came from the person paying for the communication. 11 C.F.R.  
6 § 109.21(d)(1)(ii). The response acknowledged that RB requested that Denham act as the  
7 spokesperson and to appear in the ads, which he did. Denham Response at 2. Because Denham  
8 is an agent of his Committee, his actions are also imputed to his Committee. 11 C.F.R.  
9 §§ 109.3(b)(1), (2); 109.21(a), (d)(1)(ii).

10 Though the television and radio ads meet the definition of "coordinated  
11 communications," they qualify for the safe harbor for candidate charitable solicitations in  
12 11 C.F.R. § 109.21(g)(2). This provision exempts from the definition of "coordinated  
13 communications" public communications in which a Federal candidate solicits funds for certain  
14 tax-exempt organizations as permitted by 11 C.F.R. § 300.65, provided that the public  
15 communications do not PASO the soliciting candidate or that candidate's opponents in that  
16 election. In this matter, Denham, a Federal candidate, appeared and/or spoke in broadcast radio  
17 and television ads to solicit funds for RB, a 501(c)(3) organization, in support of Project Gold  
18 Star. The available information indicates that RB is an organization described in 11 C.F.R.  
19 § 300.65, and the solicitations for donations to RB complied with the requirements of 11 C.F.R.  
20 § 300.65 because they appeared to have been for the purpose of raising funds for RB in support  
21 of Project Gold Star. Thus, it appears that these communications are exempt from the definition

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<sup>5</sup> RB's internet ad is not included in this analysis because it is exempt from the definition of electioneering communications. 11 C.F.R. § 100.29(c)(1).

1 of "coordinated communications" if they did not promote or support Denham and did not attack  
2 or oppose his opponent.

3 It does not appear that the ads at issue promote or support Denham or attack or oppose  
4 any of his opponents. Although the Commission has not defined the term "promote, support,  
5 attack, or oppose," it has provided some guidance in advisory opinions as to what might  
6 constitute PASO of a candidate. See A'O 2009-26 (Coulson) (concluding that a state officeholder  
7 could use non-federal funds to pay for communication that did not PASO a candidate for Federal  
8 office because the communication was solely part of the State officeholder's duties, did not  
9 solicit donations, nor did it expressly advocate the candidate's election or the defeat of her  
10 opponents); see also AOs 2007-34 (Jackson), 2007-21 (Holt), 2006-10 (Echostar) and 2003-25  
11 (Weinzapfel) (holding that the mere identification of an individual who is a Federal candidate  
12 does not, in itself, promote, support, attack or oppose that candidate).

13 The only clearly identified candidate in the ads is Denham, who is identified as a veteran,  
14 a State Senator, and as Chairman of the Veterans' Affairs Committee, not as a candidate for  
15 Federal office. The ads do not contain express advocacy or its functional equivalent, and do not  
16 contain references to any election or political party. Given the above, it does not appear that the  
17 ads PASO'd Denham or any of his opponents.

18 Neither the timing of the benefit concert nor the involvement of the Denham campaign  
19 consultants/media buyer/supporters in the planning of the benefit concert and ads would appear  
20 to prevent the application of the safe harbor for charitable solicitations. See Explanation and  
21 Justification for Final Rules for Safe Harbor for Endorsements and Solicitations by Federal  
22 Candidates (11 C.F.R. § 109.21(g)) 71 Fed. Reg. 33201-33202 (Jun. 8, 2006) (stating that the  
23 "safe harbor applies regardless of the timing and proximity to an election ... of the solicitation

1 and [w]hen the safe harbor is applicable, the . . . soliciting candidate (and the candidate's agents)  
2 may be involved in the development of the communication, in determining the content of the  
3 communication, as well as determining the means or mode and timing or frequency of the  
4 communication.""); *See also*, AO 2006-10 (Echostar).

5 Based on the above, the ads at issue were not coordinated communications. Accordingly,  
6 the Commission found no reason to believe that Jeff Denham and Denham for Congress and  
7 David Bauer, in his official capacity as treasurer, accepted and received prohibited in-kind  
8 corporate contributions resulting from coordinated communications in violation of 2 U.S.C.  
9 § 441b(a); and no reason to believe that Denham for Congress and David Bauer, in his official  
10 capacity as treasurer, failed to report such contributions in violation of 2 U.S.C. § 434(b).

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Remembering the Brave Foundation MUR: 6362**

**I. INTRODUCTION**

This matter was generated by two complaints filed with the Federal Election Commission ("the Commission"), one by Sean Fox and another by Tal Cloud and Mike Der Manouel, Jr., which were designated as MURs 6289 and 6362, respectively. See 2 U.S.C. § 437(g)(a)(1). The complaints concern ads broadcast by Remembering the Brave Foundation ("RB"), a section 501(c)(3) charitable organization, to promote a May 28, 2010, benefit concert in support of a program in California to create specialized license plates for families of military personnel killed on active duty. The ads featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. The concert was held at the Chukchansi Gold Resort & Casino.

The complaints in these two matters involve allegations that the radio and television advertisements promoting the concert were electioneering communications that were coordinated with Denham for Congress and David Bauer, in his official capacity as treasurer, ("Federal Committee") and were not disclosed to the Federal Election Commission ("the Commission"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Complainants in MUR 6362 also alleged that the advertisements were financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB.

1 RB acknowledged that it paid for the advertisements and asserted that no  
2 violations of the Act occurred because the advertisements do not contain express  
3 advocacy or its functional equivalent.

4 It appears that the radio and television ads at issue meet the definition of  
5 "coordinated communications," but qualify for the safe harbor for candidate charitable  
6 solicitations under 11 C.F.R. § 109.21(g) because: (1) the ads do not promote, support,  
7 attack, or oppose ("PASO") Denham or any other Federal candidate(s); (2) RB, the  
8 organization for which the funds were solicited, is a 501(c)(3) tax-exempt organization as  
9 described at 11 C.F.R. § 300.65; and (3) the funds appeared to have been raised solely for  
10 charitable purposes, *i.e.*, donations to RB, a 501(c)(3) organization to benefit the Gold  
11 Star Project. Accordingly, the Commission found no reason to believe that Remembering  
12 the Brave Foundation made a prohibited in-kind corporate contribution resulting from  
13 coordinated communications in violation of 2 U.S.C. § 441b(a).

14 With regard to the allegations that the advertisements were electioneering  
15 communications, the Commission was equally divided on whether to find reason to  
16 believe that Remembering the Brave Foundation violated 2 U.S.C. §§ 434(f) and 441d,  
17 by failing to file disclosure reports for these communications and failing to include  
18 proper disclaimers on the communications. The Commission will issue one or more  
19 Statements of Reasons setting forth the basis for its decision regarding these allegations.

20

1     **II.     FACTUAL AND LEGAL ANALYSIS**

2             **A.     Factual Background**

3             In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup>  
4     District, and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup>  
5     Congressional District. Denham did not run for re-election to the State Senate. Denham  
6     won the June 8, 2010, Republican primary and the November 2, 2010, general election.

7             In the two months before the June 8 primary, Denham's State Committee made  
8     transfers totaling \$225,000 to RB, an entity organized under Section 501(c)(3) of the  
9     Internal Revenue Code (26 U.S.C. § 501(c)(3)). RB honors veterans killed in action, and  
10    it organizes ceremonies and events to honor deceased servicemembers and their families.  
11    See <http://www.rememberingthebrave.org/>. The transfers included a \$25,000 donation  
12    made on April 12, 2010, and three loans, which the Committee forgave: a \$100,000 loan  
13    made on April 19, 2010, a \$50,000 loan made on May 12, 2010, and a \$50,000 loan on  
14    May 25, 2010.<sup>1</sup>

15            Eleven days before the June 8 primary, a benefit concert was held at the  
16    Chukchansi Gold Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup>  
17    Congressional District. The concert, sponsored by RB and featuring country and western  
18    music performer Phil Vassar, was advertised on radio, television, and the internet as a  
19    benefit concert to raise donations for Project Gold Star—a program administered by the  
20    California Department of Veteran Affairs to raise private donations to pay the costs of a  
21    specialized license plate program for the families of U.S. military personnel killed while  
22    serving on active duty. Several of the advertisements promoting the concert featured

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<sup>1</sup> See <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1521503&amendid=0> and <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1568050&amendid=0>.



1 Denham. RB asked Denham to act as spokesperson and to appear in the ads because of  
2 his "long-standing association with veterans' issues and the Gold Star Project  
3 legislation." Response at 2. Denham, an Air Force veteran, was Chairman of the  
4 Veterans' Affairs Committee while he was a California State Senator and was a coauthor  
5 of Senate Bill 1455, the California Gold Star Family License Plate bill. Project Gold Star  
6 was signed into law in September 2008.

7 Complainant in MUR 6289 provided a "Transcript of Coordinated Ads," which  
8 contains a link to the television ad as pasted on the internet at  
9 <http://www.rememberthebrave.com/>, a transcript of the radio ad, and a list of seven TV  
10 and radio stations that aired the ads. The ads aired in May 2010, up to the date of the  
11 event.

12 **TRANSCRIPT OF RADIO AD:**

13 **ANNOUNCER:** Join country superstar Phil Vassar for a one-night  
14 Remember the Brave benefit concert, Friday May 28<sup>th</sup> Memorial weekend  
15 at Chukchansi Gold Resort and Casino. Veteran Affairs Committee  
16 Chairman Senator Jeff Denham.

17  
18 **JEFF DENHAM:** As a veteran, I know the sacrifices of our servicemen  
19 and women, and the sacrifice shared by their loved ones who pray for their  
20 safe return. But some of them don't make it, their families then become  
21 Gold Star families. This event will raise funds for Gold Star families and  
22 the Gold Star project as recognition for their ultimate sacrifice. Please  
23 join us at our benefit concert on May 28<sup>th</sup> Memorial weekend. If you can't  
24 make it, go to Remember the Brave dot com to learn more and to make  
25 your tax-deductible donations. Remember, every dollar counts.

26  
27 I'm Senator Jeff Denham.

28  
29 **ANNOUNCER:** Join Phil Vassar and Jeff Denham at the Remember the  
30 Brave benefit concert. For tickets go to Chukchansi Gold Resort and  
31 Casino or visit Ticketmaster dot com.  
32

**TRANSCRIPT OF TELEVISION AD (as posted on the internet) :**  
**<http://www.rememberthebrave.com/>**

PAGE 1: At top of page is the logo of Remembering the Brave, followed by Benefit Concert. Undierneath it is "Phil Vassar" followed by the date (May 28<sup>th</sup>) and location of the event (Chukchansi Gold Resort & Casino), a photo of a sample specialized license plate next to a statement: "Proceeds benefit the California Department of Veteran Affairs Project Gold Star, a link to the California Department of Veteran Affairs website, and two buttons: "Buy Tickets" and "Donate."

PAGE 2: (Video)(30 seconds):

- **First clip:** Phil Vassar live concert and a voiceover "Join country superstar Phil Vassar for a one night benefit concert" while the following words flash on the screen "Remember the Brave" "Chukchansi Gold Resort and Casino" and "May 28<sup>th</sup>".
- **Second clip:** Denham with 3 other individuals, two of whom appear to be veterans. Denham is standing in the middle of the group while the words "Senator Jeff Denham, Chairman, Veterans Affairs" flash on the screen. Denham then says "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families."
- **Third clip:** Phil Vassar concert and a voiceover "Join Phil Vassar at the Remember the Brave benefit concert. Visit Ticketmaster dot com for your tickets today" while the words "May 28<sup>th</sup>" "Chukchansi Gold Resort and Casino" and "Ticketmaster.com" flash on the screen.
- **Fourth clip:** same shot of Denham with the veterans and Denham saying "If you can't make it, go to Rememberthebrave.com to learn more" while the words "Rememberthebrave.com" flash on the screen.

**TRANSCRIPT OF INTERNET AD:**

- **Left side of screen:** Photo of Denham and the words "State Senator Jeff Denham, Veterans' Affairs Committee" under the photo.
- **Right Side of screen:** Message "As a veteran, I know the sacrifices of our service men and women. A sacrifice shared by their loved ones who pray for their safe return. But some don't make it. Their families then become Gold Star Families. We're raising funds to make available commemorative license plates for these families as recognition for their sacrifice. Please join us at our benefit concert on May 28<sup>th</sup>. If you can't attend, I urge you to learn more [link] about these families and make a tax-deductible contribution [link]. Remember, every dollar counts. Learn

- 1 More: California Department of Veteran Affairs – Project Gold Star  
2 [link].  
3 • Bottom of screen: rememberthebrave.com is a project of Remembering  
4 The Brave Foundation, a 501(c)(3) not-for-profit organization. For more  
5 information, please visit www.RememberingTheBrave.org. Contributions  
6 and donations are tax deductible and directly benefit the Remembering the  
7 Brave Foundation.  
8

9 RB sponsored the benefit concert, the proceeds of which were donated to Project  
10 Gold Star. Response at 2. RB also stated that it, not the Tribe, produced, aired, and paid  
11 for the radio, television, and internet ads. *Id.* Documentation submitted with the  
12 complaint in MUR 6362 indicates that GBA and Alamance Advisors handled the media  
13 buy for the concert on behalf of its client, RB. *See* Emails between Genet Slagle (media  
14 buyer with GBA) to Matt Rosenfeld (President/General Manager for KSEE-NBC24,  
15 KSEE Weather Plus, and LATV la alternativo), dated April 29, 2010, regarding Gold  
16 Star Families Proposal. It also appears that GBA and Alamance Advisors handled the  
17 media buys for the Denham for Congress campaign in 2010.<sup>2</sup> *See* Emails from Genet  
18 Slagle to Donald Osika, dated January 29, 2010. The response did not specify how much  
19 was spent on the ads, but does not dispute the \$100,000-\$200,000 amount mentioned in  
20 the complaint. It appears that RB raised a total of \$105,440.24, about a third of the total  
21 amount raised (\$300,000) for Project Gold Star.<sup>3</sup>

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<sup>2</sup> The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA and to Alamance for broadcast advertising.

<sup>3</sup> The California Department of Veteran Affairs announced that Project Gold Star had met its fundraising goal. *See* <http://www.cdva.ca.gov/newhome.aspx>. RB posted a letter from the Department of Veteran Affairs thanking it for its \$105,440.24 donation in support of Project Gold Star. *See* <http://www.rememberingthebrave.org/news/>. On the letter is a handwritten note, indicating that this was the single largest donation received. *Id.* In a news release announcing that the Gold Star Project had raised \$300,000 and that the Gold Star plate initiative had passed, RB acknowledges that it "together with Senator Denham, his supporters, and other contributors ... raised approximately one-third of the funds needed to get the license plate initiative passed." *Id.*

1 RB acknowledged that the ads aired during May 2010, up until the May 28<sup>th</sup> date  
2 of the benefit concert, which was within thirty (30) days of the California Congressional  
3 primary election in which Denham appeared as a candidate. *Id.* at 4. However, the  
4 response argued the concert was scheduled for May 28<sup>th</sup> because it was close to  
5 Memorial Day, an appropriate date on which to hold an event related to veteran/military  
6 issues and causes, and not because May 28 was close to the primary. *Id.* at 6. The  
7 response also stated that the ads aired over a geographic area around the Casino where  
8 the concert was held and included Denham's State Senate district, the 19<sup>th</sup> Congressional  
9 District, and areas beyond. *Id.* at 4. Finally, the response acknowledged that the ads  
10 could be received by more than 50,000 people within the 19<sup>th</sup> Congressional District. *Id.*

11 **B. Coordinated Communications**

12  
13 The Act subjects contributions and expenditures to certain restrictions,  
14 limitations, and reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b.  
15 Contributions can be monetary or "in-kind." In-kind contributions include an  
16 expenditure made by any person "in cooperation, consultation, or concert, with, or at the  
17 request or suggestion of, a candidate, his authorized political committees, or their  
18 agents," and are subject to the same restrictions and reporting requirements as other  
19 contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R. §§ 100.52(d)(1), 109.21(b).  
20 The Commission's regulations at 11 C.F.R. § 109.21 provide that coordinated  
21 communications constitute in-kind contributions from the party paying for such  
22 communications to the candidate, the candidate's authorized committee, or the political  
23 party committee which coordinates the communication. A corporation is prohibited from  
24 making any contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

1 A communication is coordinated if it is paid for by someone other than the  
2 candidate or the candidate's authorized committee (or the political party committee,  
3 where applicable); it satisfies one or more content standards; and it satisfies one or more  
4 conduct standards. All three prongs must be met for a communication to be considered  
5 coordinated. 11 C.F.R. § 109.21. The Commission's regulations exempt from the  
6 definition of "coordinated communication" a public communication in which a Federal  
7 candidate solicits funds for organizations as permitted by 11 C.F.R. § 300.65, provided  
8 that the public communication does not PASO the soliciting candidate or that candidate's  
9 opponent(s) in the election. See 11 C.F.R. § 109.21(g)(2). Federal candidates and  
10 officeholders may solicit funds for tax-exempt organizations as described in 26 U.S.C.  
11 § 501(c). 11 C.F.R. § 300.65.

12 The radio and television ads at issue meet all three prongs of the coordination test.  
13 The payment prong is satisfied because there is information that the ads were paid for by  
14 RB, someone other than the candidate, his authorized committee, or political party  
15 committee. 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the  
16 communications qualify as public communications which "refer[ ] to a clearly identified  
17 House or Senate candidate that [are] publicly distributed or otherwise publicly  
18 disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the  
19 ...primary or preference election."<sup>4</sup> 11 C.F.R. § 109.21(c)(4)(i). The content prong is also  
20 satisfied because the ads meet the definition of electioneering communications. 11 C.F.R.  
21 § 109.21(c)(1). The ads are electioneering communications because they were publicly

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<sup>4</sup> A public communication includes broadcast communications. 2 U.S.C. § 431(22). It does not include internet communications, except for communications placed for a fee on another's Web site. 11 C.F.R. § 100.26. "Clearly identified" means the candidate's name or photograph appears, or "the identity of the candidate is otherwise apparent through an unambiguous reference." 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

1 distributed on radio and television, refer to a clearly identified candidate for Federal  
2 office, were publicly distributed within 30 days before the primary election, and were  
3 targeted to the relevant electorate (the ads could be received by 50,000 or more persons in  
4 the district that Denham sought to represent (19<sup>th</sup> Congressional District)).<sup>5</sup> 11 C.F.R.  
5 § 100.29.

6 The conduct prong is satisfied if a candidate or candidate's committee assents to a  
7 request or suggestion that the public communication be created, produced, or distributed,  
8 and that request or suggestion came from the person paying for the communication.  
9 11 C.F.R. § 109.21(d)(1)(ii). The response acknowledged that RB requested that  
10 Denham act as the spokesperson and to appear in the ads, which he did. Response at 2.  
11 Because Denham is an agent of his Committee, his actions are also imputed to his  
12 Committee. 11 C.F.R. §§ 109.3(b)(1) and (2); 109.21(a), (d)(1)(ii).

13 Though the television and radio ads meet the definition of "coordinated  
14 communications," they qualify for the safe harbor for candidate charitable solicitations in  
15 11 C.F.R. § 109.21(g)(2). This provision exempts from the definition of "coordinated  
16 communications" public communications in which a Federal candidate solicits funds for  
17 certain tax-exempt organizations as permitted by 11 C.F.R. § 300.65, provided that the  
18 public communications do not PASO the soliciting candidate or that candidate's  
19 opponents in that election. In this matter, Denham, a Federal candidate, appeared and/or  
20 spoke in broadcast radio and television ads to solicit funds for RB, a 501(c)(3)  
21 organization, in support of Project Gold Star. The available information indicates that  
22 RB is an organization described in 11 C.F.R. § 300.65, and the solicitations for donations

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<sup>5</sup> RB's internet ads are not included in this analysis because they are exempt from the definition of electioneering communications. 11 C.F.R. § 100.29(c)(1).

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1 to RB complied with the requirements of 11 C.F.R. § 300.65 because they appeared to  
2 have been for the purpose of raising funds for RB in support of Project Gold Star. Thus,  
3 it appears that these communications are exempt from the definition of “coordinated  
4 communications” if they did not promote or support Denham and did not attack or  
5 oppose his opponent.

6 It does not appear that the ads at issue promote or support Denham or attack or  
7 oppose any of his opponents. Although the Commission has not defined the term  
8 “promote, support, attack, or oppose,” it has provided some guidance in advisory  
9 opinions as to what might constitute PASO of a candidate. See AO 2009-26 (Coulson)  
10 (concluding that a state officeholder could use non-federal funds to pay for  
11 communication that did not PASO a candidate for Federal office because the  
12 communication was solely part of the State officeholder’s duties, did not solicit  
13 donations, nor did it expressly advocate the candidate’s election or the defeat of her  
14 opponents); see also AOs 2007-34 (Jackson), 2007-21 (Holt), 2006-10 (Echostar) and  
15 2003-25 (Weinzapfel) (holding that the mere identification of an individual who is a  
16 Federal candidate does not, in itself, promote, support, attack or oppose that candidate).

17 The only clearly identified candidate in the ads is Denham, who is identified as a  
18 veteran, a State Senator, and as Chairman of the Veterans’ Affairs Committee, not as a  
19 candidate for Federal office. The ads do not contain express advocacy or its functional  
20 equivalent, and do not contain references to any election or political party. Given the  
21 above, it does not appear that the ads PASO’d Denham or any of his opponents.

22 Neither the timing of the benefit concert nor the involvement of the Denham  
23 campaign consultants/media buyer/supporters in the planning of the benefit concert and

1 ads would appear to prevent the application of the safe harbor for charitable solicitations.  
2 See Explanation and Justification for Final Rules for Safe Harbor for Endorsements and  
3 Solicitations by Federal Candidates (11 C.F.R. § 109.21(g)) 71 Fed. Reg. 33201-33202  
4 (Jun. 8, 2006) (stating that the “safe harbor applies regardless of the timing and proximity  
5 to an election ... of the solicitation and [w]hen the safe harbor is applicable, the ...  
6 soliciting candidate (and the candidate’s agents) may be involved in the development of  
7 the communication, in determining the content of the communication, as well as  
8 determining the means or mode and timing or frequency of the communication.”); See  
9 also, AO 2006-10 (Echostar).

10 Based on the above, the ads at issue were not coordinated communications.  
11 Accordingly, the Commission found no reason to believe that Remembering the Brave  
12 Foundation made a prohibited in-kind corporate contribution resulting from coordinated  
13 communications in violation of 2 U.S.C. § 441b(a).

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Picayune Rancheria of the Chukchansi Indians/  
Chukchansi Tribal Government**

**MUR: 6362**

**I. INTRODUCTION**

This matter was generated by two complaints filed with the Federal Election Commission, one by Sean Fox, and another by Tal Cloud and Mike Der Manouel, Jr., respectively, which were designated as MURs 6289 and 6362 See 2 U.S.C. § 437g(a)(1).

The complaints alleged that radio and television advertisements for a May 28, 2010, benefit concert for the Remembering the Brave Foundation ("RB") featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB. The concert was held at the Chukchansi Gold Resort & Casino, which is owned and operated by the Picayune Rancheria of the Chukchansi Indians/the Chukchansi Tribal Government)("Tribe").

In MUR 6289, the complaint alleged that the advertisements promoting the benefit concert were coordinated electioneering communications, which were paid for by the Tribe, resulting in undisclosed contributions from the Tribe to Denham for Congress ("Federal Committee"). In MUR 6362, the complaint alleged that the same communications were coordinated with the Denham campaign and involved the Tribe and others. This complaint also alleged that the Tribe failed to disclose coordinated communications and independent expenditures made in connection with the benefit concert and/or Denham's Federal Committee, and may have done so to hide the true source of the funding. The Tribe filed a response to the

1 complaint in MUR 6362, stating that there is no basis for finding that it made coordinated  
2 communications or otherwise violated the provisions of the Federal Election Campaign Act of  
3 1971, as amended ("the Act").

4 As explained below, the Commission found no reason to believe that the Picayune  
5 Rancheria of the Chukchansi Indians violated any provisions of the Act or Commission  
6 regulations in connection with the allegations in this matter.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Factual Background**

9 In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup> District,  
10 and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup> Congressional  
11 District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,  
12 Republican primary and the November 2, 2010, general election.

13 Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold  
14 Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup> Congressional District. The  
15 concert, sponsored by Remembering the Brave Foundation and featuring country and western  
16 music performer Phil Vassar, was advertised on radio, television, and the internet as a benefit  
17 concert to raise donations for Project Gold Star—a program administered by the California  
18 Department of Veteran Affairs to raise private donations to pay the costs of a specialized license  
19 plate program for the families of U.S. military personnel killed while serving on active duty.  
20 Several of the advertisements promoting the concert featured Denham.

21 In its response, the Tribe acknowledged that it provided the venue for and distributed  
22 promotional materials about the concert, but stated that none of its promotional materials referred  
23 to Denham or to any candidate. The Tribe further stated that it made the following in-kind

1 donations to RB in support of the benefit concert: the use of its casino as the venue for the  
2 concert, a newspaper strip ad with the Fresno Bee, rack cards for distribution, postcards for  
3 distribution to Chukchansi guests, automated phone calls to Chukchansi guests, food vouchers  
4 with the purchase of two tickets to the event, rooms and meals for performers, an email blast,  
5 posters, and casino overhead announcements. *See Tribe's response* at 4-6. In addition, the Tribe  
6 noted that several television and radio stations ran public service announcements promoting the  
7 concert, which were provided without cost to the Tribe. *Id.* Finally, the Tribe asserted that it did  
8 not pay for or distribute any promotional materials that referred to Denham or to any clearly  
9 identified candidate, did not disseminate campaign materials prepared by the candidate, and did  
10 not expressly advocate the election or defeat of a clearly identified candidate. *Id.* at 5. The Tribe  
11 provided copies of its promotional materials, and none of the ads provided refer to Denham or to  
12 any other clearly identified candidate.

13 **B. Coordinated Communications/Independent Expenditures**  
14

15 The Act subjects contributions and expenditures to certain restrictions, limitations, and  
16 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary  
17 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,  
18 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized  
19 political committees, or their agents," and are subject to the same restrictions and reporting  
20 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.  
21 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that  
22 coordinated communications constitute in-kind contributions from the party paying for such  
23 communications to the candidate, the candidate's authorized committee, or the political party

1 committee which coordinates the communication. A corporation is prohibited from making any  
2 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

3 A communication is coordinated if it is paid for by someone other than the candidate or  
4 the candidate's authorized committee (or the political party committee, where applicable); it  
5 satisfies one or more content standards; and it satisfies one or more conduct standards. All three  
6 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

7 An independent expenditure is an expenditure for a communication which expressly  
8 advocates the election or defeat of a clearly identified candidate and which is not made in  
9 cooperation, consultation or concert with, or at the request or suggestion of, any candidate,  
10 candidate's committee, party committee or their agents. 11 C.F.R. § 100.16.

11 Based on the Tribe's response and other available information, it does not appear that the  
12 Tribe paid for ads featuring Denham, or that it made undisclosed coordinated communications  
13 and/or independent expenditures in connection with the benefit concert and/or the Denham  
14 campaign, as alleged in the complaints.

### 15 C. Conclusion

16 Accordingly, the Commission found no reason to believe that the Picayune Rancheria of  
17 Chukchansi Indians/Chukchansi Tribal Government violated any provisions of the Act or  
18 Commission regulations in connection with the allegations in this matter.

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Californians for Fiscally Conservative Leadership      MUR: 6362**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Tal Cloud and Mike Der Manouel, Jr. *See* 2 U.S.C. § 437g(a)(1).

The complaint alleged that advertisements for a May 28, 2010, benefit concert for the Remembering the Brave Foundation (“RB”) featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate (“State Committee”) to RB. The concert was held at the Chukchansi Gold Resort & Casino. The complaint further alleged that the ads were coordinated with Denham for Congress (“Federal Committee”) and that the coordination involved the Californians for Fiscally Conservative Leadership (“CFCL”). Complainants also alleged that CFCL failed to disclose coordinated communications and independent expenditures made in connection with the benefit concert and/or Denham’s Federal Committee, and may have done so to hide the true source of the funding.

CFCL filed a response, stating that it was not involved with the concert, did not coordinate with the Denham campaign, and properly reported its independent expenditures to the Commission. CFCL also asserted that it has not otherwise violated the provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”). CFCL response at 7. As explained

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below, the Commission found no reason to believe that CFCL violated any provisions of the Act or Commission regulations in connection with the allegations in this matter.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Factual Background**

In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup> District, and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup> Congressional District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010, Republican primary and the November 2, 2010, general election.

Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup> Congressional District. The concert, sponsored by RB and featuring country and western music performer Phil Vassar, was advertised on radio, television, and the internet as a benefit concert to raise donations for Project Gold Star—a program administered by the California Department of Veteran Affairs to raise private donations to pay the costs of a specialized license plate program for the families of U.S. military personnel killed while serving on active duty. Several of the advertisements promoting the concert featured Denham.

CFCL filed a response, stating that it is a tax-exempt 527 organization that is registered with the Commission as an independent-expenditure-only committee. CFCL stated that it was formed after the concert and was not involved with it. *See* CFCL Response at 4. CFCL also stated that it made independent expenditures in the form of radio ads in the period before the California primary, but that these expenditures were separate from the benefit concert, were not coordinated with the Denham campaign, and were properly reported to the Commission. *Id.* at 6-7.

**B. Coordinated Communications/Independent Expenditures**

The Act subjects contributions and expenditures to certain restrictions, limitations, and reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary or “in-kind.” In-kind contributions include an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents,” and are subject to the same restrictions and reporting requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R. §§ 100.52(d)(1), 109.21(b). The Commission’s regulations at 11 C.F.R. § 109.21 provide that coordinated communications constitute in-kind contributions from the party paying for such communications to the candidate, the candidate’s authorized committee, or the political party committee which coordinates the communication. A corporation is prohibited from making any contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

A communication is coordinated if it is paid for by someone other than the candidate or the candidate’s authorized committee (or the political party committee, where applicable); it satisfies one or more content standards; and it satisfies one or more conduct standards. All three prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate and which is not made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate, candidate’s committee, party committee or their agents. 11 C.F.R. § 100.16.

The complaint makes general allegations that CFCL made undisclosed coordinated communications and/or independent expenditures in connection with the concert and/or the Denham Federal Committee. However, the complaint did not provide any information to

1 support these allegations. The complaint does not identify specific communications that it  
2 alleges were coordinated by CFCL, nor any specific unreported independent expenditures CFCL  
3 allegedly made on the Denham Federal Committee's behalf.

4 **C. Conclusion**

5 The complaint did not provide any information suggesting that CFCL made undisclosed  
6 coordinated communications and/or independent expenditures in connection with the concert  
7 and/or the Denham campaign. Accordingly, the Commission found no reason to believe that  
8 Californians for Fiscally Conservative Leadership violated any provisions of the Act or  
9 Commission regulations in connection with the allegations in this matter.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Carlos Rodriguez**

**MUR: 6362**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Tal Cloud and Mike Der Manouel, Jr. *See* 2 U.S.C. § 437g(a)(1).

The complaint alleged that advertisements for a May 28, 2010, benefit concert for the Remembering the Brave Foundation ("RB") featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB. The concert was held at the Chukchansi Gold Resort & Casino. The complaint further alleged that the ads were coordinated with Denham for Congress ("Federal Committee") and that the coordination involved Carlos Rodriguez and Gilliard Blanning & Associates, Inc. ("GBA"), the media buyer working for both RB and the Denham Federal Committee. The complaint also alleged that Carlos Rodriguez failed to disclose coordinated communications and independent expenditures made in connection with the concert and/or Denham's Federal Committee, and may have done so to hide the true source of the funding.

As explained below, the Commission found no reason to believe that Carlos Rodriguez violated any provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") or Commission regulations in connection with the allegations in this matter.

1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            **A. Factual Background**

3            In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup> District,  
4    and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup> Congressional  
5    District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,  
6    Republican primary and the November 2, 2010, general election.

7            Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold  
8    Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup> Congressional District. The  
9    concert, sponsored by RB and featuring country and western music performer Phil Vassar, was  
10    advertised on radio, television, and the internet as a benefit concert to raise donations for Project  
11    Gold Star—a program administered by the California Department of Veteran Affairs to raise  
12    private donations to pay the costs of a specialized license plate program for the families of U.S.  
13    military personnel killed while serving on active duty. Several of the ads promoting the concert  
14    featured Denham.

15           Carlos Rodriguez appears to be a campaign consultant who may have worked on the  
16    Denham campaign. GBA is a campaign consulting firm and vendor for the Denham campaign  
17    that appears to have purchased advertising for both the Denham campaign and the benefit  
18    concert. Documentation submitted with the complaint indicates that GBA handled the media  
19    buy for the concert on behalf of its client, RB. See Emails between Genet Slagle (media buyer  
20    with GBA) to Matt Rosenfeld (President/General Manager for KSEE-NBC24, KSEE Weather  
21    Plus, and LATV la alternativo), dated April 29, 2010, regarding Gold Star Families Proposal. It  
22    also appears that GBA handled the media buys for the Denham for Congress campaign in 2010.<sup>1</sup>

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<sup>1</sup> The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA for broadcast advertising.

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1 See Emails from Genet Slagle to Donald Osika, dated January 29, 2010. Other than this  
2 information indicating that GBA performed media buyer work for both RB and the Denham  
3 Federal Committee, the complaint does not include specific allegations regarding which  
4 communications were coordinated or what coordination Carlos Rodriguez undertook. The  
5 complaint does not indicate any specific unreported independent expenditures that Carlos  
6 Rodriguez allegedly made on behalf of the Denham Federal Committee. Carlos Rodriguez did  
7 not file a response to the complaint.

8 **B. Coordinated Communications/Independent Expenditures**

9 The Act subjects contributions and expenditures to certain restrictions, limitations, and  
10 reporting requirements. See generally 2 U.S.C. §§ 441a, 434b. Contributions can be monetary  
11 or "in-kind" In-kind contributions include an expenditure made by any person "in cooperation,  
12 consultation, or concert with, or at the request or suggestion of, a candidate, his authorized  
13 political committees, or their agents," and are subject to the same restrictions and reporting  
14 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.  
15 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that  
16 coordinated communications constitute in-kind contributions from the party paying for such  
17 communications to the candidate, the candidate's authorized committee, or the political party  
18 committee which coordinates the communication. A corporation is prohibited from making any  
19 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

20 A communication is coordinated if it is paid for by someone other than the candidate or  
21 the candidate's authorized committee (or the political party committee, where applicable); it  
22 satisfies one or more content standards; and it satisfies one or more conduct standards. All three  
23 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

1           An independent expenditure is an expenditure for a communication which expressly  
2 advocates the election or defeat of a clearly identified candidate and which is not made in  
3 cooperation, consultation or concert with, or at the request or suggestion of, any candidate,  
4 candidate's committee, party committee or their agents. 11 C.F.R. § 100.16.

5           The complaint makes general allegations that Carlos Rodriguez made undisclosed  
6 coordinated communications and/or independent expenditures in connection with the concert  
7 and/or the Denham Federal Committee. However, the complaint did not provide any  
8 information to support these allegations. The complaint does not identify specific  
9 communications that it alleges to have been coordinated by Carlos Rodriguez nor any specific  
10 unreported independent expenditures Rodriguez allegedly made on behalf of Denham's Federal  
11 Committee.

12           **C. Conclusion**

13           The complaint did not provide any information suggesting that Carlos Rodriguez made  
14 undisclosed coordinated communications and/or independent expenditures in connection with  
15 the concert and/or the Denham campaign. Accordingly, the Commission finds no reason to  
16 believe that Carlos Rodriguez violated any provisions of the Act or Commission regulations in  
17 connection with the allegations in this matter.

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**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS****RESPONDENT: David Gilliard****MUR: 6362****I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Tal Cloud and Mike Der Manouel, Jr. *See* 2 U.S.C. § 437g(a)(1).

The complaint alleged that advertisements for a May 28, 2010 benefit concert for the Remembering the Brave Foundation ("RB") featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB. The concert was held at the Chukchansi Gold Resort & Casino. The complaint further alleged that the advertisements were coordinated with Denham for Congress ("Federal Committee") and that the coordination involved David Gilliard and Gilliard Blanning & Associates, Inc. ("GBA"), the media buyer working for both RB and the Denham Federal Committee. The complaint also alleged that David Gilliard failed to disclose coordinated communications and independent expenditures made in connection with the benefit concert and/or Denham's Federal Committee, and may have done so to hide the true source of the funding.

As explained below, the Commission found no reason to believe that David Gilliard violated any provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") or Commission regulations in connection with the allegations in this matter.

1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            **A. Factual Background**

3            In 2010, Jeff Denham was both a California State Senator, representing the 12<sup>th</sup> District,  
4            and a candidate for the U.S. House of Representatives for California's 19<sup>th</sup> Congressional  
5            District. Denham did not run for re-election to the State Senate. Denham won the June 8, 2010,  
6            Republican primary and the November 2, 2010, general election.

7            Eleven days before the June 8 primary, a benefit concert was held at the Chukchansi Gold  
8            Resort & Casino, in Coarsegold, California, which is in the 19<sup>th</sup> Congressional District. The  
9            concert, sponsored by RB featuring country and western music performer Phil Vassar, was  
10           advertised on radio, television, and the internet as a benefit concert to raise donations for Project  
11           Gold Star—a program administered by the California Department of Veteran Affairs to raise  
12           private donations to pay the costs of a specialized license plate program for the families of U.S.  
13           military personnel killed while serving on active duty. Several of the advertisements promoting  
14           the concert featured Denham.

15           David Gilliard appears to be a partner and founder of GBA, a campaign consulting firm  
16           and vendor for the Denham campaign, that appears to have purchased advertising for both the  
17           Denham campaign and the benefit concert. Documentation submitted with the complaint  
18           indicates that GBA handled the media buy for the concert on behalf of its client, RB. *See* Emails  
19           between Genet Slagle (media buyer with GBA) to Matt Rosenfeld (President/General Manager  
20           for KSEE-NBC24, KSEE Weather Plus, and LATV la alternativo), dated April 29, 2010,  
21           regarding Gold Star Families Proposal. It also appears that GBA handled the media buys for the  
22           Denham for Congress campaign in 2010.<sup>1</sup> *See* Emails from Genet Slagle to Donald Osika, dated

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<sup>1</sup> The Denham Federal Committee's 2010 April Quarterly Report reflects disbursements to GBA for broadcast advertising.

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1 January 29, 2010. Other than this information indicating that GBA performed media buyer work  
2 for both RB and the Denham Federal Committee, the complaint does not include specific  
3 allegations regarding which communications were coordinated or what coordination David  
4 Gilliard undertook. The complaint does not identify any specific unreported independent  
5 expenditures that David Gilliard allegedly made on behalf of Denham's Federal Committee.  
6 David Gilliard did not file a response to the complaint.

7 **B. Coordinated Communications/Independent Expenditures**

8 The Act subjects contributions and expenditures to certain restrictions, limitations, and  
9 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary  
10 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,  
11 consultation, or concert with, or at the request or suggestion of, a candidate, his authorized  
12 political committees, or their agents," and are subject to the same restrictions and reporting  
13 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.  
14 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that  
15 coordinated communications constitute in-kind contributions from the party paying for such  
16 communications to the candidate, the candidate's authorized committee, or the political party  
17 committee which coordinates the communication. A corporation is prohibited from making any  
18 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

19 A communication is coordinated if it is paid for by someone other than the candidate or  
20 the candidate's authorized committee (or the political party committee, where applicable); it  
21 satisfies one or more content standards; and it satisfies one or more conduct standards. All three  
22 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

1           An independent expenditure is an expenditure for a communication which expressly  
2           advocates the election or defeat of a clearly identified candidate and which is not made in  
3           cooperation, consultation or concert with, or at the request or suggestion of, any candidate,  
4           candidate's committee, party committee or their agents. 11 C.F.R. § 100.16.

5           The complaint makes general allegations that David Gilliard made undisclosed  
6           coordinated communications and/or independent expenditures in connection with the concert  
7           and/or the Denham Federal Committee. However, the complaint did not provide any  
8           information to support these allegations. The complaint does not identify specific  
9           communications that it alleges to have been coordinated by David Gilliard nor any specific  
10          unreported independent expenditures Gilliard allegedly made on behalf of Denham's Federal  
11          Committee.

12           **C. Conclusion**

13          The complaint did not provide any information suggesting that David Gilliard made  
14          undisclosed coordinated communications and/or independent expenditures in connection with  
15          the concert and/or the Denham campaign. Accordingly, the Commission finds no reason to  
16          believe that David Gilliard violated any provisions of the Act or Commission regulations in  
17          connection with the allegations in this matter.



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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Gilliard Blanning & Associates**

**MUR: 6362**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Tal Cloud and Mike Der Manuel, Jr. *See* 2 U.S.C. § 437g(a)(1).

The complaint alleged that advertisements for a May 28, 2010, benefit concert for the Remembering the Brave Foundation ("RB") featured Jeff Denham, a California State Senator and a candidate in the primary election for the 19<sup>th</sup> Congressional District in California, and were disseminated within 30 days of the California Congressional primary election on June 8, 2010. These ads were allegedly financed from funds Denham transferred from Jeff Denham for State Senate ("State Committee") to RB. The concert was held at the Chukchansi Gold Resort & Casino. The complaint further alleged that the ads were coordinated with Denham for Congress ("Federal Committee") and that the coordination involved Gilliard Blanning & Associates, Inc. ("GBA"), the media buyer working for both RB and the Denham Federal Committee. The complaint also alleged that GBA failed to disclose coordinated communications and independent expenditures made in connection with the benefit concert and/or Denham's Federal Committee, and may have done so to hide the true source of the funding.

As explained below, the Commission found no reason to believe that GBA violated any provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") or Commission regulations in connection with the allegations in this matter.

1 that GBA performed media buyer work for both RB and the Denham Federal Committee, the  
2 complaint does not include specific allegations regarding which communications were  
3 coordinated or what coordination GBA undertook. The complaint does not indicate any specific  
4 unreported independent expenditures that GBA allegedly made on behalf of the Denham Federal  
5 Committee. GBA did not file a response to the complaint.

6 **B. Coordinated Communications/Independent Expenditures**

7 The Act subjects contributions and expenditures to certain restrictions, limitations, and  
8 reporting requirements. *See generally* 2 U.S.C. §§ 441a, 434b. Contributions can be monetary  
9 or "in-kind." In-kind contributions include an expenditure made by any person "in cooperation,  
10 consultation, or concert with, or at the request or suggestion of, a candidate, his authorized  
11 political committees, or their agents," and are subject to the same restrictions and reporting  
12 requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A) and (B)(i); 11 C.F.R.  
13 §§ 100.52(d)(1), 109.21(b). The Commission's regulations at 11 C.F.R. § 109.21 provide that  
14 coordinated communications constitute in-kind contributions from the party paying for such  
15 communications to the candidate, the candidate's authorized committee, or the political party  
16 committee which coordinates the communication. A corporation is prohibited from making any  
17 contribution in connection with a Federal election. 2 U.S.C. § 441b(a).

18 A communication is coordinated if it is paid for by someone other than the candidate or  
19 the candidate's authorized committee (or the political party committee, where applicable); it  
20 satisfies one or more content standards; and it satisfies one or more conduct standards. All three  
21 prongs must be met for a communication to be considered coordinated. 11 C.F.R. § 109.21.

22 An independent expenditure is an expenditure for a communication which expressly  
23 advocates the election or defeat of a clearly identified candidate and which is not made in

1 cooperation, consultation or concert with, or at the request or suggestion of, any candidate,  
2 candidate's committee, party committee or their agents. 11 C.F.R. § 100.16.

3 The complaint makes general allegations that GBA made undisclosed coordinated  
4 communications and/or independent expenditures in connection with the concert and/or the  
5 Denham Federal Committee. However, complainants did not provide any information to support  
6 these allegations. The complaint does not identify specific communications that it alleges to  
7 have been coordinated by GBA, nor any specific unreported independent expenditures GBA  
8 allegedly made on behalf of the Denham's Federal Committee.

9 **C. Conclusion**

10 The complaint did not provide any information suggesting that GBA made undisclosed  
11 coordinated communications and/or independent expenditures in connection with the concert  
12 and/or the Denham campaign. Accordingly, the Commission finds no reason to believe that  
13 Gilliard Blanning & Associates violated any provisions of the Act or Commission regulations in  
14 connection with the allegations in this matter.

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