

A Washington State Smear Campaign

A trial lawyer's familiar attempt to bring down Republican Senate candidate Dino Rossi.

By KIMBERLEY A. STRASSEL



Desperate political environments tend to inspire desperate political tactics. In Washington state, liberal activists are desperate.

Republican Dino Rossi is seeking to unseat Democratic Sen. Patty Murray. It's a high-stakes race. If this fall shapes up as a wave election, Mr. Rossi could find himself the 51st vote Republicans would need to take back the Senate. And now that he's leading in some polls, the left is unleashing the dirty tricks.

Meet activist trial lawyer Knoll Lowney. The attorney is at the center of Washington's liberal circle—tight with green activists, labor outfits and Democrats. The self-acclaimed promoter of "social justice issues" can often be found filing environmental suits, and is one of the actors behind Washington's initiative 1098, which this fall will seek to impose an income tax on the state's most productive earners. But Mr. Lowney's real love is costing Mr. Rossi elections.



Associated Press

Republican senatorial candidate Dino Rossi shakes hands with a supporter during an evening gathering to await election returns from Washington state's primary election day, Tuesday, Aug. 17, 2010, in Bellevue, Wash. (AP Photo/Ted S. Warren)

His main vehicle for attack is the Building Industry Association of Washington (BIAW), a trade group. In a state largely characterized by a progressive (i.e., self-loathing) business community, BIAW has proved the main counterweight to Washington's labor and environmental groups. The trade group proudly supports free-market candidates for office, acts of free-speech that Washington's liberal community finds highly offensive.

Most offensive was when, with BIAW support, Mr. Rossi, a successful businessman, nearly won the 2004 gubernatorial election against Christine Gregoire (losing only after a recount found he'd come up short by 129 votes). When a 2008 rematch became likely, Democrats set to work attacking Mr. Rossi's character. When even this didn't dim Mr. Rossi's prospects, Mr. Lowney sharpened his pencils.

He filed a lawsuit in 2007, arguing that BIAW was inappropriately using workers-comp money to fund political campaigns. Mr. Lowney's convenient demand? That the judge immediately bar the BIAW from accessing money it might use for Mr. Rossi's campaign. When the judge denied that request, in September 2008, Mr. Lowney immediately filed another suit against BIAW claiming Mr. Rossi and the trade group had improperly colluded on campaign activity.

On this basis, Mr. Lowney convinced a judge to allow him to depose Mr. Rossi—eight days before the 2008 election. Mr. Rossi arrived at the Lowney deposition to a swarm of cameras, and the spectacle was enough to sow doubt in voters' minds. True, 2008 was a bad year for Republicans—but the deposition certainly played a role in Mr. Rossi's defeat. The Lowney team, at the time, claimed it needed the deposition immediately so it could file for "emergency" injunctive relief. The lawyers never did, of course, and after Mr. Rossi lost, the lawsuit disappeared. Even the Seattle Times was moved to editorialize that the Lowney deposition was a "farce" and "baldly political."

Now, some 21 months later, and only after Mr. Rossi declared for the Senate, Mr. Lowney has rediscovered his case. The lawyer recently sent a process server with a subpoena, not to the proper representative of Mr. Rossi's former gubernatorial campaign but to Mr. Rossi's personal home—twice—the week before the August Senate primary. This subpoena, demanding yet more documents—from 2008 and 2004—comes despite the fact that the state campaign agency, the Public Disclosure Commission, conducted an exhaustive investigation into the Rossi allegations, and in March of this year fully exonerated the Senate candidate.

We're now about to discover whether Washington's judicial system will again be abused for politics. Washingtonians should watch this one. The judge overseeing Mr. Lowney's resurrected suit is Mike Heavey, a former Democratic state senator who was appointed to the court by former Gov. Gary Locke (now President Obama's secretary of commerce). Judge Heavey's brother-in-law was once the president of the state's largest labor organization.

In a telephone conversation yesterday, Mr. Lowney took issue with headlines declaring Mr. Rossi "exonerated" by the state commission, saying the body instead "didn't have the information to prosecute." As for the timing, he says he was waiting for the government to conclude its investigation. (The commission cleared Mr. Rossi in March.) Mr. Lowney said this is "not a campaign issue, it's a prosecution," and moreover that he didn't think it was "appropriate" to be "litigating it in the press."

BIAW Executive Vice President Tom McCabe says "this is all about using the legal process as a means to attack a political opponent." The Rossi campaign referred me to Mr. Rossi's lawyer's recent response to the court, which objects to the subpoena as an "improper, politically-motivated effort to employ the Court system for political purposes."

To his credit, Judge Heavey has pushed the court date—which had originally been set for the first day of November—to after the election. There is no telling what Mr. Lowney will ask for in the meantime. But no one should be surprised when he asks for it.

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