

Year of the Spoiler

In November 2005. U.S. representative Randy "Duke" Cunningham, who had run as a born-again Christian and "a congressman we can be proud of," pleaded guilty to mail fraud, tax evasion, and accepting \$2.4 million in bribes. A special election followed in June 2006 to **fill** Cunningham's seat representing the prosperous coast north of San Diego. The Fiftieth Congressional District was solidly Republican. The Republican candidate, former congressman Brian Bilbray, ought to have won without breaking a sweat. Yet polls showed a close race between Bilbray and his Democratic opponent, Francine Busby, a woman with almost no political experience. Busby was a member of the Cardiff school board.

The loss of a Republican congressional seat months before the November midterm elections would have been particularly humbling to the party. The GOP raised five million dollars to aid Bilbray's campaign, compared to a still-impressive two million for Busby. This bought packs of consultants, hours of air time, and the kind of dirty politicking that

Americans had come to accept as normal. A Busby ad juxtaposed Bilbray's picture with a trash can. A Bilbray ad insinuated that Busby was soft on child pornography. Whatever.

Though a moderate Republican in general, Bilbray was a foaming-at-the-mouth immigration hawk. The Fiftieth District had relatively few Latinos and a lot of whites who feared an invasion from the south. Bilbray supported building a continuous border fence from the Pacific Ocean to the Gulf of Mexico. In one of his ads he was shown driving a bulldozer, keeping "Tijuana sewage" off California's beaches.

The race's potential spoiler was William Griffith, a crew cut-shorn West Pointer who taught geometry in Carlsbad and had hosted a TV math show. Griffith was a Republican running as an independent on an anti-immigration platform. He maintained that he was *more* anti-immigrant than Bilbray. How that was possible was unclear.

Griffith's support hovered at around 4 percent, or roughly the margin of error in the polls showing Bilbray and Busby as tied. Griffith spent two thousand dollars of his own money on his campaign. That bought some gas money and a website that said that Bilbray was "most assuredly NOT conservative" and that called Bushy "a classic tax-and-spend liberal."

Then something odd happened. Voters in the Fiftieth District began getting phone calls telling them to vote for Griffith. No one was more puzzled at that than the candidate himself. "I do not know who's conducting the phone campaign on my behalf," he wrote on his website. "I am grateful for the enthusiasm of those who know what I stand for, and want to promote my candidacy." But, he admitted, "I don't know if they're doing it for me or as a tactic against Bilbray."

The mystery was solved when ads touting Griffith began running on conservative talk radio, saying in part:

Think lobbyist Brian Bilbray's a conservative when it comes to immigration? Think again ... Lobbyist Bilbray isn't the candidate to secure our borders. You have a choice. Independent William Griffith is en-

dorsed by the San Diego Minutemen and San Diego Border Alert because he opposes guest worker programs, amnesty, and the hiring of illegal immigrants. Francine Busby supports John McCain's position on immigration-stronger enforcement at the border, better support for border agents, and no amnesty. When it comes to immigration, don't expect lobbyist Brian Bilbray to fix Washington, or fix our borders. I'm Francine Busby, candidate for Congress, and I approve this message. Paid for by Francine Busby for Congress.

The Busby/Griffith ads set a new high-water mark for candor. Busby approved the message, and there was a token pitch for Busby herself-but, remember, these ads targeted the Rush Umbaugh demographic, who weren't about to vote for a feminazi educrat. The point of the ad was to get Bilbray supporters to switch to Griffith, a candidate who couldn't possibly win. Bilbray complained to reporters that it was "unheard of" for a candidate to run ads for an opponent.

You would have had to follow the campaign business closely to be aware of a precedent. Here's one: In November 2005, some Virginia voters received an "Official Democrat and Progressive Voter Guide." The guide had scant praise for the Democratic candidate for governor. Tim Kaine, it said, had "turned his back on the issues you believe in." The guide also said that "Russ Potts is the only candidate who will stand up for progressive principles." It ticked off seven issues in which Potts took a liberal stance and Kaine was more moderate.

Potts was a liberal Republican state senator running as an independent. Potts had not sent the handsomely printed guide. To find out who did, alert voters had to read the fine print running vertically alongside the picture of Kaine. Looking like a photo credit, it read, "Paid for and authorized by Virginians for Jerry Kilgore." Kilgore, the Republican nominee, had watched his initial lead over Kaine erode to a single percentage point; 45 percent for Kilgore versus 44 percent for Kaine in a poll taken shortly before Election Day. Hoping to split the Kaine vote by touting the liberal credentials of Potts, the Kilgore campaign had

sent the fake "official" guide to residents of Washington, D.C., suburbs where Democratic turnout was high.

One of Kilgore's accomplishments as Virginia attorney general had been to help pass the state's "Stand by Your Ad" law, which makes candidates responsible for the content of their political ads.

Blogger Nicholas Norvell called 2006 "the year of the 'Spoiler.'" Though Joe Lieberman's independent bid for his own Connecticut U.S. Senate seat commanded most of the national attention, three- and four-way races were unfolding all over the nation. So were attempts to game the spoiler effect.

A May 2006 SurveyUSA poll showed that the Honorable Rick Santorum was the least popular member of the entire U.S. Senate. Santorum was the third most powerful Republican senator, an up-and-comer already hinting at a presidential run, and a man fighting for his political life.

As with all the Republican incumbents of 2006, Santorum's ties to President Bush and the Iraq war had gone from being a plus to a minus. If anything, he had been more gung ho on Iraq than Bush himself. In a June 2006 speech, Santorum announced that he'd seen secret documents proving that Saddam Hussein's weapons of mass destruction had finally been located (a newsworthy claim that the president was not making.)

Polls showed Santorum trailing Democratic challenger Bob Casey, Jr., the son of a former governor. Both sides launched blistering negative campaigns. The Santorum effort surreally included a Republican dressed in a duck suit who shadowed Casey at public appearances. He was "Bob the Duck," there to remind voters that the Democrat was ducking the issues. Actually, there was more common ground between Casey and Santorum than might be expected from the tone of the campaign. Like Santorum, Casey was a pro-life Roman Catholic. He was for staying in Iraq and against gun control.

The one candidate representing the stereotypic liberal position on these issues was the Green Party candidate, Carl Romanelli. Romanelli had zero chance of winning and little of making the ballot. For that he would need 67,070 signatures. The Green Party had only 20,000 members in Pennsylvania. In June the Luzerne County Green Party nonetheless raised \$66,000 to pay for Romanelli's petition drive. All twenty contributors were identified by the press as Republican or conservative donors, a few of them hiding behind misspelled names or names of household members. Another thirty dollars came from a liberal, namely the candidate himself.

Politically, Santorum and Romanelli were like matter and antimatter. If they shook hands, they'd annihilate. "This is politics," Santorum told the press on a campaign swing through the Pittsburgh suburbs. "It's no surprise when you're an incumbent, it helps to have more people on the ballot." Romanelli was equally blasé about the arrangement. "I have friends in all political parties," he said. "It's just that my Republican friends are more confident about standing with me than my Democratic friends. And as a group, my Republican friends are a little better off."

The friendly Republican money was funneled to JSM, one of the companies that had collected Nader signatures in 2004. JSM turned in 93,000 names. The Democrats lost no time in challenging them.

On a steamy week in August, volunteers from the Democratic and Green parties began poring over the signatures in Harrisburg. Two representatives of the Santorum campaign observed-it was their money. As the fifth day began, the group had gone through 11,000 signatures and had about 82,000 to go. Green volunteer Tom Lingenfelter leaned over the table to hear Democratic Party attorney Shawn Gallagher speak. "He threw his forearm up at me" is Lingenfelter's story. "I put my arm up and his arm hit mine." The Democrats say Lingenfelter started it. Lingenfelter cursed Gallagher, there was some shoving, and a court officer, Bob Snook, stepped between the two to break it up.

Another Green, John Ryan, entered the fray. The fight spilled into

the hallway as Snook gouged Ryan's eyes and began choking him. Snook called the police. Six officers responded.

The Green Party has a list of ten key values, of which the fourth is *nonviolence*. Ryan insisted he was defending himself and didn't know Snook was a court officer. "I thought he was just another insane Democrat."

Like most things in politics, this new trend is about money. Through August 2006, Rick Santorum's campaign was said to have raised twenty-one million dollars, compared to eleven million raised by Casey. In a campaign manager's wildest dreams, the extra ten million might buy ten extra percentage points in the November vote. Figure a million dollars per percentage point as an off-the-cuff estimate of what it costs to buy votes in a state like Pennsylvania.

The sixty-six thousand dollars that Santorum's supporters spent on Romanelli's signature drive was pin money. Yet an August poll showed Romanelli getting about 5 percent of the vote in a three-way race. No one expected Romanelli to retain all those votes in November. The JSM signatures might be thrown out. These were the risks the Republican donors were taking. But say that, on the average, the sixty-six-thousand-dollar investment in Romanelli could be expected to decrease the Casey vote by 1 percent. The race was between Santorum and Casey, so decreasing the Casey vote is just as good as increasing the Santorum vote. The upshot is that sixty-six thousand dollars spent on Romanelli's signatures could do about as much for Santorum as a million dollars spent on his own TV ads (which were mostly attacking Casey anyway). Gaming the spoiler effect can be an order of magnitude more cost-effective than conventional campaign techniques. For consultants, this was the real lesson of the Year of the Spoiler.

Five candidates ran in the 2006 Republican primary for Arizona's Eighth Congressional District. The most popular was the most conservative, and he may have been the most unelectable. Polls implied that

Randy Graf, a former pro golfer and founding member of the rVlinute-man border vigilantes, was likely to win the primary. The polls also predicted that Graf would then go on to lose to the likely Democratic candidate, Gabrielle "Gabby" Giffords.

The National Republican Congressional Committee determined that Graf had to be cut loose. They chipped in at least \$122,000 (some reports said more than \$200,000) on ads for another Republican candidate, Steve Huffman. It was highly unusual for the national party to meddle in state primaries. "We don't comment on strategy," said the National Republican Congressional Committee's Ed Patru.

Huffman was a moderate. According to the polls, he was the only Republican who stood a chance of beating Giffords. He likely would have beaten Graf, too, had his vote not been split by a second moderate Republican, Mike Hellon. There was pressure on Hellon to drop out, and he ignored it.

The Democratic National Committee saw the Republican ante and raised it. Before the primary, the DNC funneled money to pay for a barrage of attack ads targeting Huffman. That would help the ultraconservative Graf and lead to an easy victory for Gabby Giffords.

The Eighth District includes some of the most porous border with Mexico. "When it came time to secure our borders, Steve Huffman was missing," the Democrats' ads said. "If we can't trust Huffman to show up for work, how can we trust him to protect us?" Huffman held **ONE** chairman Howard Dean personally responsible for the attack. The other Republican candidates blamed the Republican National Committee's Ken Mehlman for favoring Huffman. Asked for his opinion of the Republican National Committee, GOP candidate Mike Hellon was concise: "They're idiots."

He had a point. The Democrats' money was better spent this time. Their designated Republican loser, Graf, won the primary by six points over Huffman. **Geaf** had no problem with the fact that Democrats helped buy his victory. "Gabby Giffords wanted me," he told supporters. "**Gabby** Giffords has me."

Texas governor Rick Perry, a Karl Rove protégé from way back, was in hot water for reasons only partly of his making. Maybe the least of his worries was the Democratic challenger, Chris Bell. There were also two strong independents, Carole Strayhorn and Kinky Friedman.

Carole Strayhorn was a state comptroller and former Austin mayor who had planned to challenge Perry for the Republican nomination. The chance of succeeding against a Rove hand-pick in Texas was slight. Strayhorn dropped out of the Republican race and retooled for an independent run. Friedman was the most colorful candidate, the thinking man's Jesse Ventura. He was a country rock singer and lyricist ("They Don't Make Jews Like Jesus Anymore"), the author of faux-autobiographical detective novels (*The Love Song of J. Edgar Hoover*), and a bit player in *Texas Chainsaw Massacre 2*. He appealed disproportionately to citizens who did not normally vote. Asked where he got the signatures for his ballot petitions, he answered, "Thank God for bars and dance halls."

Texas is one of the states that makes it insanely difficult to qualify for the ballot. Both Friedman and Strayhorn had to collect 45,540 signatures within a two-month window. Strayhorn made a media event of turning in 101 boxes containing 223,000 signatures. The gesture backfired when the press noticed that Friedman turned in an also-ample 169,000 signatures, and his fit in 11 similar-size boxes. Strayhorn's boxes were mostly full of air.

Texas law says nothing about full boxes. By supplying nearly five times as many signatures as required, Strayhorn should have breezed through the certification process. Nevertheless, the Perry-appointed Texas secretary of state, Roger Williams, took his own sweet time examining the signatures. Strayhorn sued Williams over the delay, and ultimately both she and Friedman made the ballot.

In late January 2006 Wayne Slater of *The Dallas Morning News* analyzed Strayhorn's campaign-contribution report. He determined that

"more than half of her largest contributions ... came from givers with a history of backing Democrats." Contributions included twenty thousand dollars from Ben Barnes, a Democratic former lieutenant governor. Much of the money was from trial attorneys. "This is a ~~never-before-~~seen hostile takeover attempt by Democrats' most recognized puppeteers, personal injury trial lawyers," sniped Perry's political director, Alfredo Rodriguez.

Strayhorn's father had been the longtime dean of the University of Texas law school. It wasn't just lawyers, though; Strayhorn was raking in money from the gamut of Democratic stalwarts. Strayhorn explained by saying that it was a two-way race. Democrats were helping her because they knew that only a Republican could win in Texas.

Friedman preferred to say it was two-way race between Strayhorn and her ego. The polls did not much support Strayhorn's claim, either. Perry was in the lead, and Democrat Chris Bell was usually second. Most polls had Strayhorn third or even a distant fourth. To her Democratic contributors, tossing money at Strayhorn was like making a hard break shot in pool. It was impossible to predict what was going to happen; anything that broke up the status quo was likely to be good. Certainly aid to Strayhorn hurt Perry. the least palatable candidate of all to most Democrats. To further confuse things, there was a Libertarian candidate, James Werner, who threatened to be a spoiler's spoiler. "I would be pleased if I could cost any of my opponents the election," Werner boasted.

Ben Westlund took the opposite position. Early in his independent run for Oregon governor, Westlund made an explicit vow *not* to be a spoiler. He apparently had some kind of mental block about breaking campaign promises, for in August 2006 Westlund gracefully bowed out of the race. He had been polling about 10 percent in a tight contest between Democratic incumbent Ted Kulongoski and Republican challenger Ron Saxton.

That still left several potential spoilers in the race. The most prominent was the Constitution Party's Mary Starrett. The Constitution Party candidate is often expected to be a troglodyte. Starrett was more of an Ann Coulter hottie, a former morning-TV anchor with perfect hair. "Some people I've talked with say, 'If I vote for you, it might throw the race to Ted Kulongoski,'" Starrett admitted. "And I say, 'So what? What's the difference? There is no difference between Saxton and Ted. It's just Tweedle-dee and Tweedle-dum.'"

The Republicans needed Starrett to disappear. An attorney by the name of Kelly Clark had long been the Republican point man in Oregon. Clark determined that the Constitution Party had failed to comply with an antiquated law requiring parties to publish advance notice of their nominating convention in newspapers of general circulation, Clark filed a complaint with the State Elections Division to strike Starrett from the ballot.

Ron Saxton's campaign denied having anything to do with the complaint. Starrett turned nasty, bringing up Kelly Clark's personal history. In 1992 Clark stalked an ex-girlfriend, broke into her home, and had what the courts termed "sexual contact without consent." He pleaded guilty to third-degree sexual abuse and was disbarred for two months. Starrett also reminded the press that Clark once shared office space with political boss Neil Goldschmidt, an admitted pedophile.

After cooling down, Starrett offered the olive branch to Clark. In her apology, she had occasion to mention Clark's criminal past again, but only in passing, and only twice.

Oregon secretary of state Bill Bradbury ruled that Starrett would stay on the ballot. Bradbury was a Democrat. Starrett boasted that campaign money was rolling in—"Talk about pennies from heaven"—and she had plans for a preelection *TV* blitz. That requires the kind of money that Constitution Party candidates don't usually have. Was it coming from, uh, Democrats? "We're getting money from some heavy hitters who don't want Ron Saxton in office," Starrett explained.

We are witnessing a bipartisan mainstreaming of the spoiler effect

as a tool for political strategizing. It is easy to blame spoilers, and easier to blame everyone's favorite villains, political consultants. Some may feel that there ought to be a law against such a thing. It is harder to contemplate any workable legislative remedy. A law might prevent one political party from giving money to another, but much of politics is already conducted by 527 advocacy groups and other doppelgangers with no official connection to the Democrats and Republicans. It is surely a citizen's constitutional right to contribute to a Green candidate, even if that citizen has also contributed to Republicans, as it is to give money to Libertarians and to Democrats.

When hackers corrupt software, we blame the hackers. We also recognize that the software must be changed to prevent the hacking. A voting system is software. It describes how to compute a winner from the raw data of marked ballots. To be useful software, voting systems must work with people the way they actually are. Voters, candidates, and strategists can be insincere, scheming, spiteful, and even self-destructive. When such people are able to use the system to defeat the overall will of the voters, blame is properly laid on the system itself.

Can anything be done to eliminate the spoiler effect? Is there a better, fairer way of voting?