

The Politics of Bad Faith

The state's 'consumer attorneys,' to make themselves even richer, want Californians to pay \$300 per year more for auto insurance. In March, the voters will decide.

M A R K S . P U L L I A M

ROSE BIRD is dead. May she rest in peace. Her admirers — the *L.A. Times* chief among them, judging from its editorial encomium in her honor — wish for her memory to live on as a symbol of “courage,” “principle,” and, above all, “judicial independence.” Her legacy persists in other, unexpected, ways, including two propositions that will appear on the March 7 ballot. Although not officially entitled as such, Propositions 30 and 31 could accurately be called the “Rose Bird Legacy Referenda,” or perhaps “No on Rose Bird Redux.” Those inclined toward nostalgia might view these propositions — sponsored by the Coalition Against Fraud and Higher Insurance Costs — as an opportunity to re-live that Grand Moment in 1986 when California voters displayed the fortitude to throw Rose Bird and two of her activist colleagues off the California Supreme Court.

If one were forced to select the worst ruling issued during her notorious tenure as chief justice, admittedly a difficult task given the pantheon of outrageous cases from which to choose, a leading candidate would be the opinion in *Royal Globe Insurance Company v. Superior Court*, a 4-3 decision issued in 1979. (Frank Richardson, joined by William Clark and Wiley Manuel, dissented.) In *Royal Globe*, the Bird Court invented a new type of lawsuit against insurance companies, for “bad faith” refusal to settle insurance claims as promptly or as generously as a jury, second-guessing the insurers’ claims department, determined was appropriate.

Royal Globe fundamentally altered the legal obligations of insurance companies. In the liability insurance context, the insurer is contractually obligated to defend and to indemnify its insured against covered claims asserted by third parties against the insured. Such claims could consist of a “slip and fall” at an insured grocery store, a dog bite by a neighborhood pet, or injuries in-

curring in an auto accident. Prior to *Royal Globe*, the allegedly injured party (or “victim,” in lawyerspeak) would make a claim to the insured’s insurance company, which would be investigated and, depending on the circumstances, settled. An insurance claims adjuster would determine liability, evaluate damages, and in many cases propose a payment that the third party was free to accept or reject.

If the insurance company made no offer, or if the third party thought the insurer’s offer were too low, the third party could sue the insured, which the insurer would be obligated to defend. The insurance policy was a contract between insurer and insured, and the insurer’s legal obligations — arising from that contract — were to the insured only. Although not flawless, this time-tested model provided both insured and insurer reasonable protection against fraudulent or exaggerated claims. *Royal Globe* removed that protection, but that was not all.

LIKE MEDIEVAL alchemy, *Royal Globe* made two lawsuits out of one, turning routine personal injury claims into a goldmine for the plaintiffs’ bar. Because the newly-minted “bad faith” lawsuit could be asserted by third parties directly against an insurance company if it did not promptly pay the amount of damages demanded, and because the “bad faith” lawsuit carried the potential for limitless amounts of “emotional distress” and punitive damages, insurers denied claims or negotiated settlements at their peril. The only “safe” course of action was to pay the entire amount demanded immediately. Accordingly, under *Royal Globe*, insurers were effectively compelled to pay claims where liability was questionable or where damages were exaggerated (through padded medical treatment by quack doctors for unprovable soft-tissue injuries such as “whiplash”), or both.

The result? A tidal wave of abusive “bad faith” lawsuits, a dramatic increase in the “frequency” and “sever-

Mark S. Pulliam, California Political Review’s legal issues correspondent, is an attorney in private practice in San Diego.

THE FRONT LINE

Election Day

Duane Dichiara

Even though Republican Elia Pirozzi lost to Democrat Joe Baca in California's 42nd Congressional District special election, Pirozzi's campaign bore valuable lessons for the GOP about the importance of a well-organized election day get-out-the-vote drill. Leading up to this special, Democrats held a 52-33 percent registration advantage in the 42nd, but in the November 16 run-off, Pirozzi garnered 44.8 percent of the vote. Neutral sources estimate the Pirozzi campaign's election day activity added five to seven points to his vote total. It also taught several new campaign workers and local GOP leaders statewide how to run effective precinct programs.

In the election's first round, Pirozzi's campaign repeated an error made often by campaigns and local Parties: get-out-the-vote effort were limited to the weekend before the election while election day was virtually ignored. Pirozzi's first-round vote total was dismal. This mistake was not repeated in the run-off. In November, GOP forces spent approximately

Duane Dichiara is campaign manager for Assemblyman Tom McClintock, a GOP candidate in California's 19th state Senate district.

\$100,000, about 5 percent of the campaign budget, on election day get-out-the-vote. Beginning with almost no precinct infrastructure and little help from decaying Republican coalitions, they created a ground effort from scratch.

From 13 weeks out, eight to nine paid (\$800 to \$1,000 per month) Grassroots Directors walked door-to-door identifying probable Pirozzi voters. GOTV Director Nathan Fletcher spoke to lo-



cal high school Civics classes about campaigns. Instructors had agreed that students working in campaigns would receive extra credit, allowing Fletcher to sign up interested volunteers. By the final month, this generated about 100 students per evening for phone and mail programs. He added to this on election day, offering \$50 to students, parents, and local college athletic teams that helped get-out-the-vote.

Also, approximately 50 legislative staff were present. They kept Pirozzi head-

quarters open, coordinated the efforts of the hundreds of precinct workers, and walked base GOP precincts. On election day the overall effort came together. More than one thousand workers were first trained and then 800 of them, four to a precinct, covered the district from 3 to 8 p.m. More than two hundred staffed phone banks. At least one bilingual GOP worker was present at each phone bank and in most precincts in this heavily Hispanic district.

Some county Republican Parties, such as Orange, and some candidates, such as Congressman Jim Rogan, regularly run excellent election day drills. But this is not always so, especially in regions without targeted races or developed Party structures. The many Republicans who live in Democrat-majority regions are vitally important voters in statewide elections. The San Francisco area, for instance, is home to more than 800,000 GOP voters. Also, in some GOP strongholds, local Parties and many elected officials do little on election day. This loses elections.

Diligent election day activities can add two to four points in most normal elections, and five to six points in many specials. Two to four additional GOP points per county would have dramatically improved Republican fortunes in 1998's state and local elections. They can do the same in 2000.

CPR