

California's Unfair Business Practices Act. (Sections of the law prohibit not only false advertising, but even truthful statements that have "a capacity, likelihood or tendency to deceive or confuse the public.")

By relegating such speech to unprotected "commercial" status, the state Supreme Court majority has significantly changed California law, with potentially severe consequences for business defendants. Under the state's Unfair Business Practices Act, even a plaintiff who suffers *no* damage himself may trigger the seizure (on behalf of the public) of *all* a company's profits from the sale of its products in California, whenever a jury feels those statements have "a capacity to deceive or confuse the public." Only by remaining completely mute on matters of public policy that relate to its business may companies doing business in California be certain of avoiding this ruling's dire economic impact.

In his strongly-worded dissenting opinion, Justice Ming Chin wrote: "While Nike's critics have taken full advantage of their right to uninhibited, robust, and wide-open debate, the same cannot be said of Nike, the object of their ire. When Nike tries to defend itself from these attacks, the majority denies it the same First Amendment protection Nike's critics enjoy ... (B)ecause Nike sells shoes — and its defense against critics may help sell those shoes — the majority asserts that Nike may not freely engage in the debate .... The majority today refuses to honor a fundamental commitment and guarantee that both sides in a public debate may compete vigorously — and equally — in the marketplace of ideas ... Sadly, Nike is not the only one who loses here — the public does, too."

We can only hope the U.S. Supreme Court will heed Justice Janice Brown's call for reversal. CPR

## THE WORKING PRESS

# The media's post-election dogmas

*For an 18-point loser, Riordan enjoys a surprising reputation in the press.*

G E O R G E N E U M A Y R

Bill Simon's defeat made journalists suddenly nostalgic for the campaigning skills of Richard Riordan. East Coast pundit Andrew Sullivan, for example, looked across America and announced that "Riordan would have won." Perhaps it is too much to expect out-of-state commentators to recall Riordan's campaigning in the primary. His astute moves in that race included insulting California GOP icon George Deukemejian, describing his Party as out-of-touch and anti-minority, dismissing the Party's base as "extremist," and talking about abortion so much it sounded like he was ready to finance one. For a candidate who lost to a political novice by 18 points, Riordan enjoys a surprisingly good reputation with the media as a savvy campaigner.



The corollary to the Riordan-as-dynamite-candidate myth is the media-generated notion, already hardened into dogma, that Gray Davis deliberately ran "moderate" Richard Riordan out of the primary so he could run against "conservative" Bill Simon. The facts don't support it, but neither do they matter at this point. The story-line fits too

nicely with conventional wisdom.

First, if Davis's ads against Riordan during the Primary helped Simon, the help was inadvertent. Davis officials, shortly after the primary, said they ran the ads because they assumed Riordan would win and wanted to bloody him before the general election campaign began. According to the *Los Angeles Times*, Bill Clinton encouraged Davis to launch an ad campaign against Riordan because Riordan was polling well at the time. Clinton told Davis he had deployed that tactic against Bob Dole during the 1996 Republican primary to good effect. *Simon* did not factor into Clinton's thinking.

Second, Davis did not defeat Riordan in the primary; Riordan defeated himself by running an anti-Republican campaign. It has also been conveniently forgotten by some in the media that Riordan had launched ads against Davis during the primary. Foolishly looking beyond his Republican challengers, Riordan attacked Davis, thereby inviting Davis to attack him. Did Republicans not vote for Riordan because a governor they despised was criticizing him? No, the Davis ads, which depicted Riordan as a waffler, only reinforced what rank-and-file Republicans already knew and disliked about Riordan. Now, to confuse matters even more the *San Diego Union-Tribune* is re-

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*George Neumayr is California Political Review's press critic.*

porting that Garry South considered Bill Jones the GOP's "best candidate" in the race. So the media's primary myth will need a little more tinkering.



The media's avuncular concern for the California Republican Party is touching. They continue to busy themselves with thoughts about its "future," fretting that the Party hasn't been running enough candidates who think like political reporters.

No sooner had Bill Simon lost to Gray Davis than members of the California media began asking hopefully: "Will GOP count on Terminator?" "Arnie in 2006?" The *San Jose Mercury-News* declared that "Schwarzenegger has strengths that have been absent from recent Republican candidates Bill Simon and Dan Lungren, both conservatives who were shunned by Republican Party donors who thought they couldn't win." What are those strengths? At the top of the *Mercury-News*'s list is that he "espouses a centrist brand of politics that has proved successful at the polls ... He is pro-choice and favors 'sensible' gun control, including a ban on assault weapons. That could help him to attract Democrats and independents, whose support is crucial to winning statewide races." Translation: He agrees with us, so he is an attractive candidate.

The media's casting of Schwarzenegger as a redeemer for California Republicans is presumptuous and self-serving. But then, if an actor known principally for bringing R-rated violence to children can be labeled an "education activist," as the media labeled him during his Proposition 49 campaign, then surely they can anoint as the next leader of the state GOP a *de facto* Democrat whose Republicanism appears to be as substantial as his movies.



Want good press? Tell the media Republicans need to attract women voters. Orange County's liberal GOP group New Majority can always count on a respectful media hearing even after its candidates lose. The *Orange County Register* even makes arguments for the group it hasn't made for itself, as in this November "news" story: "In the wake of the Republican Party's poor state election showing, the Orange County-based New Majority renewed its battle cry for change in the state GOP. One of the group's planks is to attract more women. To do so, the Party needs to back off its opposition to abortion and work more aggressively to groom women candidates, says the manifesto of the group ... What the New Majority didn't include in its news release are statistics that buoy its argument: Exit polls show that Republican Bill Simon beat Gray Davis among men, 47 percent to 42 per-

cent. But the race was decided among women, who backed Davis 52 percent to 37 percent and led the way to Davis's 5 percentage-point margin of victory."

But California Republicans in favor of legal abortion lost badly in November's statewide races. Only Tom McClintock, an unapologetic pro-lifer, came close to winning. But that, of course, won't dim media certitude that pro-abortion is the key to a Republican renaissance. Perhaps those candidates just didn't emphasize their pro-abortion views enough. Or maybe they need to move farther to the social left. Perhaps some hearty soul in the media will now counsel California Republicans to endorse partial-birth abortion. The *San Jose Mercury-News* turned to a Virginian for insight into California's moral direction: "Larry Sabato, director of the Center for Politics at the University of Virginia, said Republicans need to recognize that California has moved left, with most voters supporting abortion rights, gun control, and protecting the environment. What they refuse to accept is that the new California is a liberal state, and it will vote for a moderate but it won't vote for a conservative," he said. "They persist in nominating conservatives and — as long as they do — they will lose."

It would perhaps be an interesting historical research project to try to locate the point at which the media reported the emergence of this "new California," a point before which they acknowledged that California was *not* liberal — a balmy time when the press thoughtfully urged even Democrats to nominate conservatives because, "as long as they nominate liberals, they will lose ...." It must be back there somewhere, or else what makes "the new California" *new*?



The *Los Angeles Times* endorsed Gray Davis for governor even as it acknowledged his fanatical devotion to putting himself above the good of the state. The governor's "obsessive pursuit of every last campaign dollar from special interests is unseemly," allowed the *Los Angeles Times* editorial board.

But why should that have stopped them from endorsing him? So what if a candidate thinks of the public good last, as long as he is liberal, right? Schooled in the political philosophy of Ted Kennedy and Bill Clinton, the members of the *Times* editorial board realize that the only really determinative voting criterion is whether or not a candidate supports abortion, gun control, and big government.

Besides, Davis hadn't committed Bill Simon's sin of clumsy campaigning — a failing far more offensive and unpardonable to the liberal media than something as minor as corrupt governance.

CPR

# Victory Formulas



80th District  
Assemblywoman  
Bonnie Garcia

*The next 10 pages of this issue are devoted to four articles considering, from a variety of perspectives, the question: How do Republicans win in California? The authors, in order of appearance, CPR Editor John Kurzweil, Assemblyman Ray Haynes, Senator H.L. Richardson, ret., and, for a national perspective, Morton Blackwell, GOP national committeeman from Virginia.*

## JOHN KURZWEIL

A newspaper editor asked me the other day, in light of Democrats' sweep of statewide offices, whether I still believed, as I wrote in "The End of (California) History?" (*CPR*, September/October 2002), that California is "nearly always 'in play'" for Republicans. Of course I do, because November's results in no way contradicted my essential arguments, which were (1) that the notion California is "too liberal" to elect Republicans, especially conservatives, applies a simplistic and unreal, and therefore irrelevant, static model to what is really a thoroughly dynamic state political scene and (2) that Republican success requires more aggressive exploitation of political opportunities that come the GOP's way — Democrats' habit, for instance, of alienating its own base voters by drifting ever further left, thereby providing an endless supply of potential "Reagan Democrats."

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*John Kurzweil is editor of California Political Review.*

To that I would add that Republicans must catch up with Democrats in basic political mechanics and that their main obstacle to doing so is continued, misplaced focus on issues — the key word being "misplaced" because the main, proper vehicle for intra-Party issue-conflict resolution is Primary campaigns and elections. But California Republicans have allowed disagreement over Republican issue positions to spill over into the inner workings of the formal state and county Party structures, into general election fund raising, precinct organizing, and other non-ideological elements of winning politics. This has undermined and, in some cases, paralyzed these essential operations, which must be restored to give Republicans their best shot at re-taking the state.

Did November 5's outcomes refute these arguments? No.

## ISSUE POSITIONS OR POLITICAL MECHANICS?

On November 7, the *Sacramento Bee* hosted a panel-of-experts discussion, moderated by *Bee* political writer Dan Weintraub, on the topic "how the [2002 general] election was won or lost," publishing an edited transcript November 17. Participants were Gray Davis campaign strategist Garry South, Bill Simon strategist Sal Russo, Field Poll director Mark DiCamillo, Senate Republican Leader Jim Brulte; GOP insurance commissioner candidate Gary Mendoza; Democrat political consultant Gale Kaufman (who ran Jack O'Connell's superintendent of public instruction campaign), and Service Employees International Union Executive V.P., western re-