

# Ads in Blunt/Carnahan race are subject of legal threats

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**ST. LOUIS** • In a recent television ad targeting Roy Blunt, Democrats charged that the Republican Senate candidate's wife is a tobacco lobbyist and that he is building a million-dollar home in Washington.

Neither statement is true.

Before putting up an ad of his own slamming his rival as dishonest, Blunt took another approach — he turned to his lawyer.

In a string of letters to television stations across the state, an attorney for Blunt pushed broadcasters to dump the spot, saying the campaign was "prepared to take all necessary action" to quash the commercial.

The ad continued to air despite Blunt's protest. But campaign experts say it's an example of the off-screen jostling over political ads — common in high-stakes elections like the Senate contest in Missouri — that can be effective without being completely successful.

Earlier this month, Fox News filed a federal lawsuit against Blunt's opponent, Democrat Robin Carnahan, accusing her of improperly using a news clip in an ad criticizing Blunt.

The constitutional protections afforded to political speech and the lax standards applied to campaign advertising — often, they only have to resemble the truth to pass muster — mean that such legal sparring rarely leads to an ad getting pulled from the air.

However, pressure from lawyers can lead broadcasters to act more cautiously. And it can force sometimes contorted explanations from the opposition — including, as Blunt's lawyer put it, the notorious "definition of 'is.'"

"The intent of the lawsuit is not to go to trial. It is to communicate with voters," said Mark Campbell, who runs a campaign media firm in New Jersey. "If a charge remains unanswered or if a political charge is not met aggressively, then voters might assume that it's all true."

## POINTS OF CONTENTION

The ad by the Democratic Senatorial Campaign Committee targeting Blunt seeks to paint him as a Washington socialite.

"Roy's the life of the party in D.C.," reads the script of the ad. "His wife? Great! A powerful tobacco lobbyist."

For several years, Abigail Blunt did lobby for the tobacco company Philip Morris. But she no longer works for Philip Morris — she lobbies for Kraft Foods, which was owned by Philip Morris' parent company before being spun off in 2007.

Abigail Blunt's job came under scrutiny in 2003, when it was discovered that Roy Blunt had attempted to insert language in a Homeland Security bill that would have helped the cigarette maker. The two were married later that year.

The ad also says, "Roy's building a new million-dollar home in D.C.'s best neighborhood ... that's how you know he's made it here."

In fact, Blunt is not building a home in the posh Georgetown neighborhood, or anywhere else in the district. In late 2008, an irrevocable trust in the name of Blunt's wife bought a tract in a housing development outside Georgetown for \$1.5 million.

Blunt's campaign insists the property was purchased as an investment, not a home. On Friday, Blunt said he never planned to build a house there.

The District of Columbia's Department of Consumer and Regulatory Affairs says there are no building permits for the property. A tax assessment database on the district's website listed the property as "vacant — with permit," a discrepancy the spokesman could not explain.

The parcel, currently an empty lot, is for sale. A real estate listing advertises a "fabulous opportunity" to "create your own design or build a new home."

The statements in the ad have led to dueling letters from Republican and Democratic lawyers to television stations across the state.

The commercial "does not address whether Ms. Blunt is still a tobacco lobbyist," Marc Elias, a Democratic lawyer in Washington, wrote in a Sept. 15 letter defending the spot.

The Blunt campaign, Elias wrote, "reads into the ad what is not there."

The same letter, attempting to offer evidence that Blunt was building a home in D.C., pointed station managers to the wrong address. A follow-up letter provided the correct address, citing a portion of the online real estate listing that says the "lot price includes a set of drawings."

"Thus, saying that Blunt is 'building' a home remains consistent with publicly available evidence," Elias wrote.

Blunt lawyer Jared Craighead responded by writing that the Democratic Senatorial Campaign Committee "appears to desire to harken back to the days of defining the definition of 'is,'" a reference to former President Bill Clinton.

Craighead called the claim that Blunt is building a house "bizarre" and untrue. He sent stations a photo of the property — an empty lot with a real estate agency's sign in the ground.

## MOVING TARGET

Broadcasters were not moved by Republican claims. In assessing an ad's content, stations are worried mostly about the potential for slander — which is not a big concern when the dispute over facts can be characterized as an argument over semantics.

Stations also do not have the resources to verify claims in political ads, which can often delve into the minutia of a candidate's background or career in office.

"Some of these claims, particularly on voting record claims, can take a week or more to fully investigate," said Donald Hicks, president and chief executive of the Missouri Broadcasters Association. "And by the end of the week, the ad has changed."

To wit: The Democratic Senatorial Campaign Committee already has a new ad attacking Blunt, one that does not revisit whether he is building a home or whether his wife is still a tobacco lobbyist.

Knowing that most stations do not fact-check ads themselves can embolden opposing campaigns who attempt to sway broadcasters with the threat of litigation.

Gregg Skall, an attorney for the broadcasters association, says campaign lawyers will often send letters with "extremely forceful language which is intended to make broadcasters think twice or three times before they continue to run the ad."

It's a common phenomenon. In 2008, Barack Obama sought to block an ad by the National Rifle Association that the Democrat's campaign said was misleading. More recently, Republican Meg Whitman, the former eBay chief who is running for governor of California, warned television stations they could be held liable for statements in an ad from the state teachers union.

Democratic lawyers also have complained about the accuracy of two third-party ads targeting Carnahan in Missouri. One of the ads complained that Carnahan has "been voting in lockstep" with the president's agenda — which is impossible because Carnahan is Missouri's secretary of state, not a legislator.

Sometimes, having lawyers complain about ads works — if just for a while. In August, two radio stations in Springfield, Mo., briefly took down an ad from the public employees union criticizing Blunt for voting to "raise his own pay five times."

A cease-and-desist letter claimed the ad was inaccurate. Blunt didn't actually vote to increase his own salary; he voted against a measure that would have allowed a separate vote on congressional pay, which is typically included in a much larger bill.

Still, two days later, the stations, KBFL-FM and KTXR-FM, put the ad back on the air after finding that it was close enough to the truth.

"It may not have been absolutely accurate," said Bonnie Bell, vice president of the company that owns the stations. But "there were no lies."

#### CARNAHAN – FOX DUEL

While Blunt has been jostling with Democrats over ads, Carnahan has been at loggerheads with Fox News over one of her ads.

The network sued Carnahan's campaign after she aired an ad featuring a 2006 interview between Fox anchor Chris Wallace and Blunt. At the time, Blunt was vying to become House majority leader, a bid criticized because of his ties to lobbyists — connections Wallace showcased to viewers.

In a federal lawsuit in Kansas City, Fox accused the Carnahan campaign of copyright infringement, creating the impression that Wallace had endorsed Carnahan, and depriving the anchor of his "interest in personal dignity and autonomy."

"The Carnahan ad is designed to make it appear as if Wallace — a trusted journalist — is instead speaking as a campaign operative," the suit says.

Carnahan's campaign has filed court papers arguing that the clip is a "fair use" of copyrighted material. Fox's lawsuit, Carnahan's campaign says, could have a "chilling" effect on communication with voters.

Paul Fleischut, an intellectual property lawyer at the St. Louis law firm Senniger Powers, says Fox will have a tough time winning in court because the First Amendment makes it difficult to muzzle any type of political speech.

If Fox does have an argument, Fleischut said, it's to the extent to which Carnahan relies on the Fox News segment — it takes up about 23 seconds of the 30-second spot.

Politically, lawsuits that take aim at a campaign ad have the potential to backfire by drawing even more attention to claims in the piece.

Since Fox filed its lawsuit, not only has Carnahan continued to run the ad, the campaign has also used the imbroglio with the conservative-leaning network in a fundraising pitch.

"Help us fight back immediately — donate now," Carnahan campaign manager Mindy Mazur wrote in a e-mail to backers.

Democrats also are more than happy to talk about their ad highlighting Blunt's real estate acquisitions: Even if he isn't building a home, they point out, he still paid more than \$1 million for a plot of land at a time when many Americans are worried about losing their homes.

"How many families in Missouri pay at least \$1.45 million for a piece of land to lay fallow?" the Democratic Senatorial Campaign Committee said in a news release after the ad aired.

Campbell, the New Jersey political media consultant, says producers of campaign ads attempt to get their facts correct — redoing an ad can be expensive and time-consuming, Campbell said.

"This is all about winning and losing," Campbell said. "None of us really get a lot of points for style."