

Litigation Alert: Blue Wave Falls Short of Reaching the Top

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If you are a member of the legal community in Texas, especially in Houston and Dallas, then you are likely familiar with the “Blue Wave” that has swept through many of the courthouses across urban areas of the state. The last three election cycles, beginning in 2016, have seen a historic shift in the judiciary, where the Democrats have won nearly every single election for county, district, and appellate court judges.

In San Antonio, not a single Republican remains on a district court seat. Houston began seeing the Blue Wave of Democrat judges in Harris County in 2016. Since then, every Democrat running for a county or district court seat in Harris County has been elected. In 2020, the wave began spreading to the counties surrounding Harris County. Most notably was Fort Bend County, which saw a Democratic sweep of all four district court openings, leaving just one Republican judge left in the county. Dallas County also saw a Blue Wave in the November 2020 Election, as every single district court opening went to the Democratic candidate.

The Blue Wave has also reached many seats on the Court of Appeals in Austin and Dallas. In Dallas, all three Republican justices on the Fifth Court of Appeals lost. This follows a trend that started in 2018, when all Republicans running for the Fifth Court of Appeals lost their re-election bids. Today, just two Republican justices remain, out of thirteen, on the Fifth Court of Appeals. Similarly, in Austin, Democrats won all four elections for the Third Court of Appeals in 2018. In 2020, Republican Chief Justice Rose lost his re-election bid, leaving the Republicans with only one remaining justice on the Third Court of Appeals.

In San Antonio, again, not a single Republican remains, as Democrats now hold every seat on the Fourth Court of Appeals.

In Houston, Republicans were able to hold on to a couple seats in the First and Fourteenth Court of Appeals in 2020, with Justices Lloyd and Wise winning their re-election bids. This is a small deviation from the 2018 election, which saw all Republican justices lose their bids for re-election.

But not every court in Texas was affected. The Texas Supreme Court continues to resist the Blue Wave and remains a stronghold for the Republican Party. In fact, the last time a Democrat sat on the Texas Supreme Court was 1998. Given the fact that each Republican justice on the Texas Supreme Court won re-election by roughly one million votes, it could be some time before the Blue Wave reaches the shores of the highest court in the state.

The practical effects of these elections were investigated in a recent study performed by Haynes and Boone. The study, titled *Reasons for Reversal in the Texas Courts of Appeals*, looked at appellate court results during the 2018-2019 court year, which covers appeals from both before and after the November 2018 elections. The findings of the study generally showed that plaintiffs in personal injury and other tort cases were less likely to have their claims reversed and more likely to have their jury verdicts upheld by the new Democratic justices than they were by the Republican justices prior to the 2018 election. The study also found the following:

- In tort and DTPA cases, during the final months of the terms of the outgoing Republican justices, judgments favoring plaintiffs were reversed 8-times more than judgments favoring defendants. After the new democratic justices were sworn in, plaintiffs and defendants had favorable rulings at approximately the same rate.
- Statewide, summary judgment rulings were reversed at a lower rate, jury verdicts were set aside at a lower rate, and bench trial verdicts were reversed at a lower rate.
- The reversal rates in the Houston First and Fourteenth Courts of Appeals decreased, but were still significantly higher than the reversal rates in the Dallas Court of Appeals.

As you may have heard over the past few months, elections have consequences. At the end of the day, these trends are not conclusive of how any given case will be treated, but these trends should be considered. Although the sample size is limited, the data indicates that plaintiffs may enjoy more favorable treatment in the appellate courts in Texas for several years.

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