

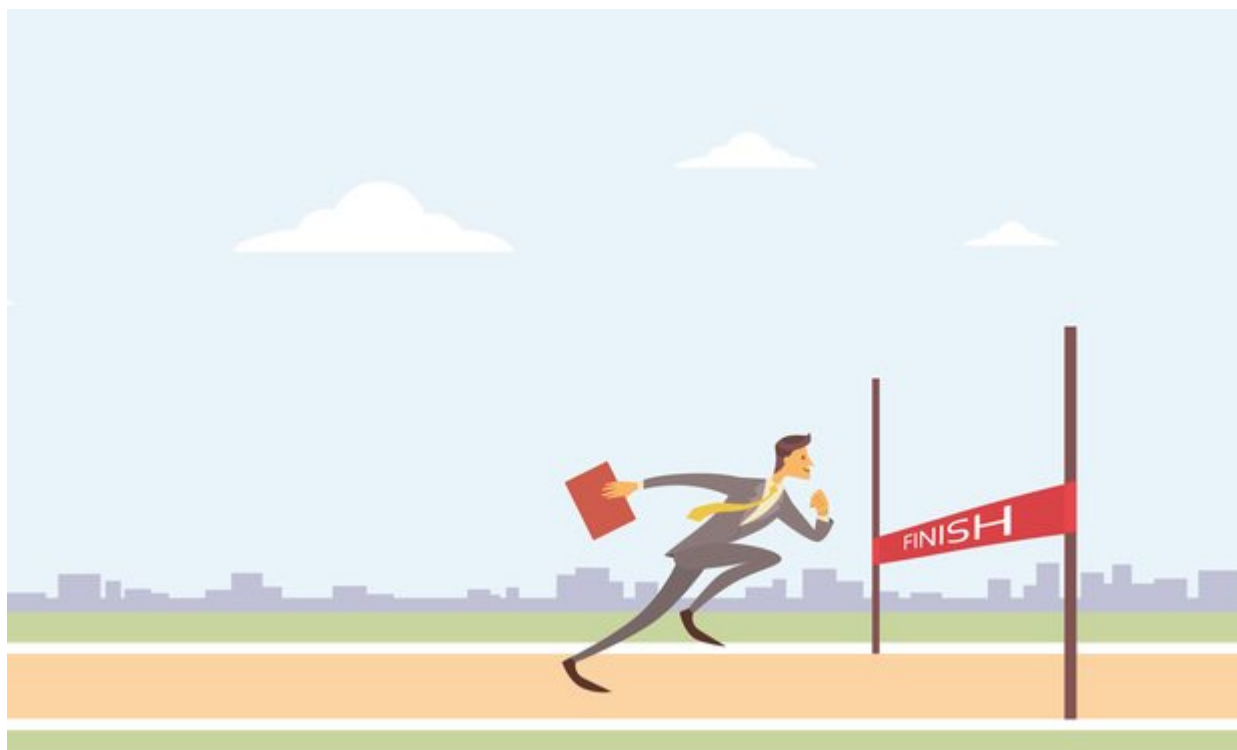
[Click to print](#) or Select '**Print**' in your browser menu to print this document.

Page printed from: <https://www.law.com/texaslawyer/2020/10/26/no-one-dared-to-run-against-70-of-texas-district-judges-and-thats-the-way-its-always-been/>

No One Dared To Run Against 70% of Texas District Judges —And That's the Way It's Always Been

Why did nearly 70% of the incumbent district judges running for reelection this year sail to another term with absolutely zero opposition? Is this good or bad for the judiciary?

By Angela Morris | October 26, 2020



(Photo: Shutterstock.com)

Suzanne Wooten heard the warning loud and clear when she filed to run against an incumbent judge in Texas.

It was the last day to file as a candidate, and she was handing over her paperwork and filing fee at her local Republican headquarters.

"It was a predominant theory: We do not run against our own. Do not do it," said Wooten, who is now a Dallas mediator. "My response was: Let's try it. This guy needs to go. For 12 years, this guy had been a tyrant."

Wooten ran anyway—and won the 380th District Court in 2008—but there were repercussions. The county's district attorney investigated her for campaign finance violations. She was convicted of felonies and forced off the bench, only to be exonerated in 2017 (<https://www.law.com/texaslawyer/2017/12/01/how-the-justice-system-severely-failed-one-of-its-own/>) after the Texas Court of Criminal Appeals ruled in a companion case that the allegations against her weren't even a crime in Texas.

Yet her local party barred her from the ballot again

(<https://www.law.com/texaslawyer/2019/12/09/republican-party-wont-let-exonerated-judge-run-on-texas-ballot/>) in 2019, arguing that her law license had been suspended between the time of her conviction and her exoneration. She said the court that exonerated her had swept away her law license suspension, but appellate courts declined to hear the case.

"When I ran, no one in Collin County had ever challenged a sitting incumbent district judge, at all," she recalled. "I think I angered a lot of people, too, because I opened the door. Today, we can challenge folks who we think need to go."

A Story in the Numbers

Texas Lawyer conducted a thorough analysis of Texas judicial races that were up for election this year for the Texas Supreme Court, Texas Court of Criminal Appeals, the 14 courts of appeals and state district courts. We scrutinized the party primaries and the November general election to locate those candidates who had zero opposition.

All of the high court candidates had opposition in either their party primaries or the general election. Only seven intermediate appellate court justices sailed through to election completely unopposed. Most unopposed candidates were running for state district courts.

Among the 145 unopposed judges, 136 were incumbents seeking reelection, which represents 67% of the total 203 incumbents in the general election. Nine unopposed district judges were new to the bench, which represents 7% of the total 138 non-incumbent candidates.

If you do want to run for a court with no obstacles, it's better to be Republican. Among the 145 unopposed candidates, 68% were Republicans and 32% were Democrats.

However, statistics show that incumbent judges across Texas enjoy an advantage when they run for reelection. Nearly 70% of the incumbent judges running for reelection this year sailed to another term with absolutely no contest in their primaries or the general election.

This year in Texas, 145 of 341 total judicial candidates, or 43%, had no opponent in either their party primary or the November general election. Among them, 136 were incumbent judges seeking reelection, and all but seven were running for district court benches.

Judicial election observers say that these numbers show how difficult it can be to unseat an incumbent judge—who might be good at his or her job, or at least good enough not to draw the ire of the local bar who would fund the expensive campaign of a challenger.

Matt Angle, a Democratic campaign consultant who has watched Texas judicial politics for more than 30 years, said he's not surprised to hear that so many incumbent judges were unopposed for reelection.

"It takes quite a bit for someone to challenge you. If you're doing a good job, and you don't have any reason for someone to fire you, it makes it even harder to do," said Angle, founder and director of the Lone Star Project, a political action committee that focuses on electing Democrats in Texas. "It's been my observation that judges generally, who are not considered good, draw a challenge."

[Click here for the full list of judges who won unopposed](#)

It's also clear that it's easiest to waltz to the bench in rural Texas rather than the five major metropolitan areas or their suburbs. Among the 145 unopposed candidates, 49% ran in rural counties, 15% ran in suburban counties and 32% ran in urban counties.

(<https://docs.google.com/spreadsheets/d/1d5sUTlaNbt1SfNULjUmrpEoOmIMfsb9zVtKngzUr07E/edit#gid=0>)

Expensive to challenge

But it's not safe to assume that all the unopposed judges are good, Angle added.

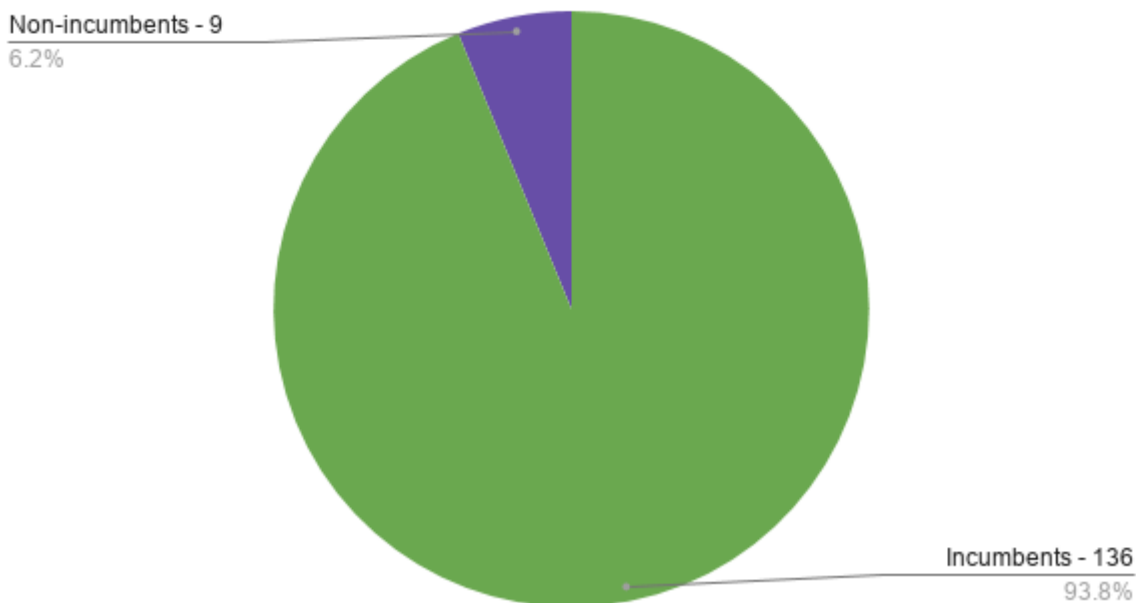
"I think what it goes to is it's difficult in the big counties to run, because it's expensive," he said. "When I have seen a challenger able to raise significant money, it's usually because the judge that is being challenged has created some animosity among a donor class."

Craig Murphy, a campaign consultant for Republican candidates, agreed that money is a barrier to running against a sitting judge. It can take \$1 million for a challenger in a big county to get his or her name out to voters, he said.

Yet another problem is finding lawyers willing to run against sitting judges—especially in small counties, he said.

"They have to go practice in front of these judges," said Murphy, president of Murphy Nasica & Associates in Irving. "When you run for office, the incumbent feels like you would feel: They would think, 'What did I do to this person? I've been nothing but fair to them in my courtroom.'"

Incumbent status of 145 totally unopposed judge candidates



Graphic: Angela Morris/ALM

Politics also plays into a challenger's calculations. Attorneys are practical thinkers and won't take a chance of challenging a sitting judge, if they think they have little likelihood of success, Murphy said.

"People see they are not going to win, and they don't run," said Murphy. "It's nothing new, and nothing really nefarious. It's just a rational decision about the voters."

But it does mean that incumbent judges can stay in office for a long time, he said.

"You could say the Texas system is not Democratic," said Murphy. "Compared to other systems out there, you would be surprised—we have infinitely more competition than they have."

Murphy noted that federal judges are appointed for life, and other states choose judges in a system where the judge is first appointed to the bench, and then voters get an up or down vote on whether to keep them in a retention election.

"We don't have that. That would be even less elections," said Murphy. "It's not a perfect system, but it's better than what other states are doing."

Longevity or diversity?

Webb County Court-at-Law No. 2 Judge Victor Villarreal, who serves as chairman of the State Bar of Texas Judicial Issues Section, said there is no straightforward answer about whether it's good or bad that so many incumbent judges win reelection unchallenged.

"It's really hard to know: Are judges unopposed because they are doing such a good job? Many times, judges run unopposed because people value stability," said Villarreal.

When an attorney knows the judge, he or she can advise a client about the judge's perspective, philosophy and how they are likely to rule, Villarreal explained.

While promoting stability on the bench may be a benefit, there could also be downsides when it comes to efforts to diversify the bench.

"I believe that the judiciary does benefit from a diversity of race, ethnicity, gender, orientation, religion, background, education," said Villarreal, who noted he's active in mentoring attorneys of color who may want to be judges.

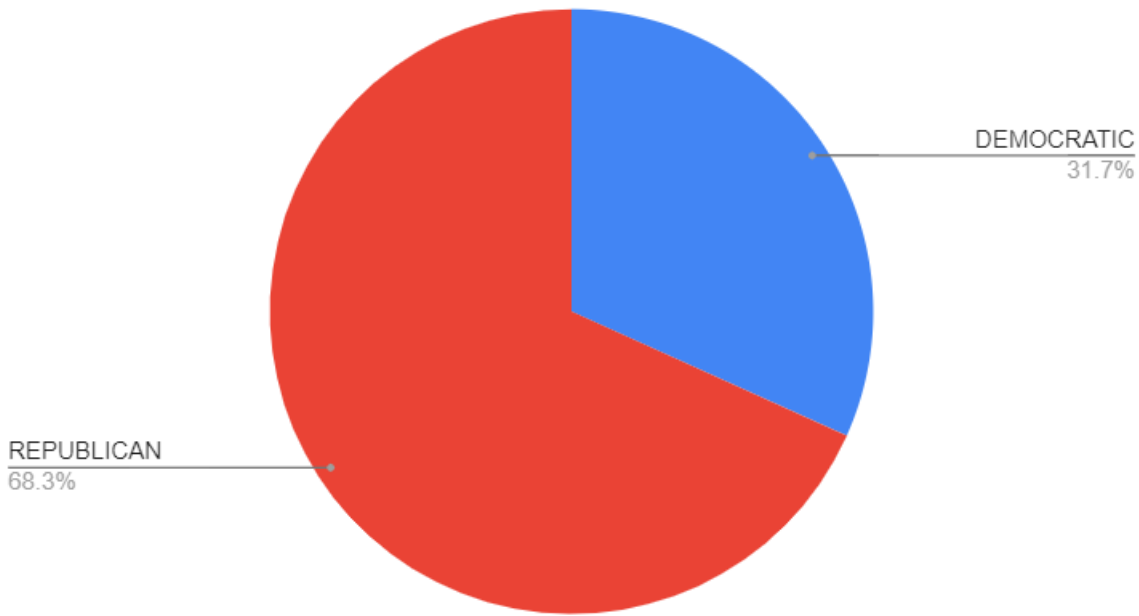
Angle, the Democratic campaign consultant, said that the fact that so many incumbents do not draw challengers does not mean lawyers of color are barred from running. But the longevity of incumbents may slow down efforts to diversify the bench.

"It does lag a little bit. It's not just that people are being barred. It's that you have to have a reason to want to replace a judge who is doing a good job. Just because the person is Anglo, does not mean the person needs to be replaced," Angle said.

Republicans versus Democrats

The election data showed that more Republican candidates compared to Democrats won their elections with no opposition.

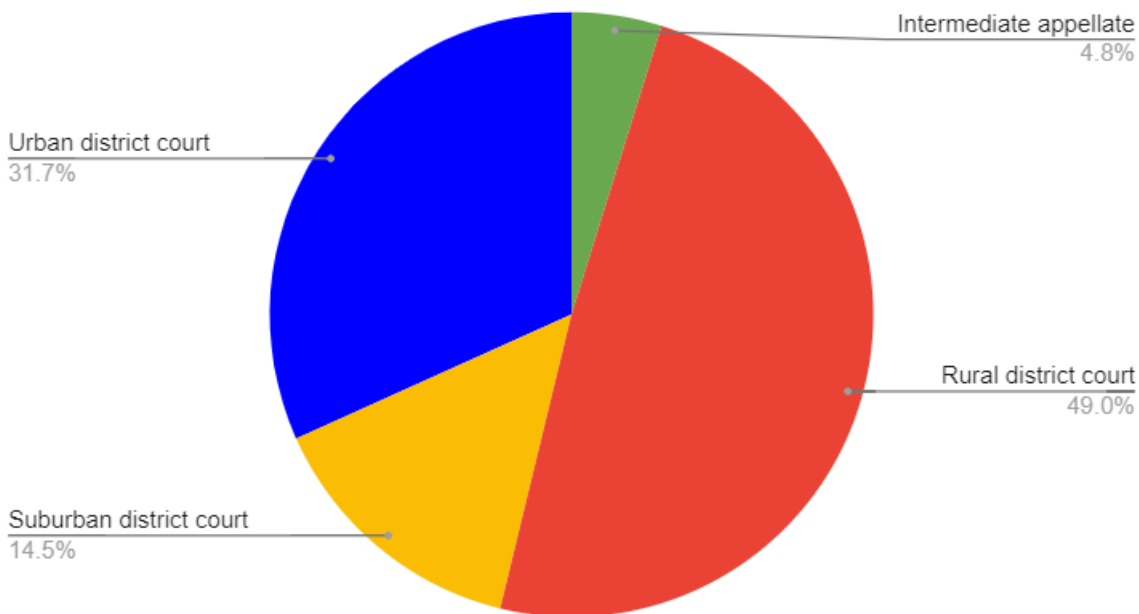
Totally uncontested Texas judicial candidates



Hover over the interactive graphic to view numbers. Graphic: Angela Morris/ALM

This may correlate with another statistical point: In rural counties—which are solidly Republican—greater numbers of district judges went unchallenged compared to their peers in urban or suburban counties.

Court type of 145 totally uncontested Texas judge candidates



Hover over the interactive graphic to view numbers. Graphic: Angela Morris/ALM

Angle, the Democratic consultant, said he thinks the nature of the political parties explains why Democratic candidates drew opponents more frequently than Republicans.

The Democratic party is a coalition of African Americans, Latinos, Asians and Anglos, he explained. It comes with a certain independence.

“In our party, if you tell someone, ‘Don’t run,’ that may be what makes them run,” said Angle, who works in Washington, D.C. and Arlington, Texas.

In contrast, he said Republican candidates may be more likely to listen if their party leaders tell them not to run against a sitting judge.

But Murphy, the Republican campaign consultant, said it’s not true that Republican party leaders discourage challengers from running against sitting judges.

“That is not their job to take sides. They are referees in a fair election,” he said.

Rather than party, Murphy said the local legal community holds more sway over who challenges incumbents. There has to be a lawyer willing to step up and run, he explained.

That’s easier said than done.

Angle said he thinks the number of unopposed judges will drop in Texas as the state becomes more competitive politically. It’s already happening in suburban counties, where Republicans rule and Democrats used to never run. Democrats are running there now.

“As time goes on, and we see Texas becomes a more competitive state, you will see more challengers,” he said. “It doesn’t mean they win—but it means there’s a chance to win.”

Related story:

Waltzing to Power: Despite Elections, No One Challenges Hundreds of US Judges

(<https://www.law.com/dailybusinessreview/2020/10/26/waltzing-to-power-despite-elections-no-one-challenges-hundreds-of-us-judges/>)

Copyright 2021. ALM Media Properties, LLC. All rights reserved.