



TADC *e-Update*
The Texas Association of Defense Counsel, Inc.

LEGISLATIVE UPDATE

September 17, 2010

With the November election around the corner, Republicans are poised to sweep Texas's statewide offices and make potentially significant gains in their Texas House majority.

Recent polling data continues to show Governor Rick Perry holding a lead of several points over challenger Bill White, the former mayor of Houston. While little or no public polling data exists for the other statewide races, incumbents Lt. Governor David Dewhurst, Attorney General Greg Abbott, Agriculture Commissioner Todd Staples, and Land Commissioner Jerry Patterson enjoy enormous funding advantages over their Democratic opponents and are expected to coast to re-election. Although an interesting race has developed for the open seat on the Texas Railroad Commission, the Republican sweep will undoubtedly benefit the politically unknown David Porter against Democratic attorney Jeff Weems.

The story is the same for the three Texas Supreme Court seats on the ballot this year. Incumbents Paul Green, Eva Guzman, and Debra Lehrmann (who was appointed to the court to replace Justice Harriet O'Neill after winning a hotly contested Republican primary) will likely win against underfunded Democratic opposition. Twelve contested courts of appeals seats will also appear on the ballot. The battle between Austin attorney (and longtime TADC member) Kurt Kuhn and former Justice of the Peace Melissa Goodwin for an open seat on the Third Court of Appeals has drawn significant interest from business groups. Additionally, Third Court Justice Alan Waldrop recently resigned from the bench, opening a vacancy that will be filled by gubernatorial appointment.

Turning to the Texas Legislature, the GOP's current three-seat majority in the House of Representatives will likely increase in November. Democratic incumbents thought to have the toughest re-election battles include Mark Homer (Paris), Kristi Thibaut (Houston), Valinda Bolton (Austin), Joe Heflin (Crosbyton), Carol Kent (Dallas), and Diana Maldonado (Round Rock). Additionally, the GOP appears to be targeting Patrick

Rose (San Marcos), Stephen Frost (Texarkana), Allen Vaught (Dallas), Kirk England (Grand Prairie), Jim McReynolds (Lufkin), Chris Turner (Fort Worth), Joe Moody (El Paso), Yvonne Gonzales Toureilles (Alice), Donna Howard (Austin), and Abel Herrero (Corpus Christi). At least two Republican incumbents face difficult re-election challenges as well: Linda Harper-Brown (Irving) and Joe Driver (Garland). If national projections of Republican voter turnout prove accurate in Texas, Republicans could net as many as six or seven seats in the Texas House, pushing their numbers into the mid-80s and improving their position in the redistricting fight next year. But don't count out the Democrats just yet. Many of incumbents under fire enjoy substantial local popularity. Texas House races are still fundamentally local in nature, especially in rural districts and in many of the suburban areas of Austin, Dallas, and Houston where Democrats have made gains in the last few election cycles.

The only change in the Texas Senate has already occurred. Former Army officer Brian Birdwell (R-Granbury) replaced longtime Senator Kip Averitt (R-Waco), winning a special election over former Senator David Sibley. The new senator is unopposed in the general election, having staved off Democratic challenges to his eligibility. Birdwell has identified himself with the "Tea Party" movement, and his presence in the Senate may shift the body in a more conservative direction. At the same time, longtime Senator Jeff Wentworth (R-San Antonio) is pondering whether to retire from the Senate following the November election to take a post in the Texas A&M University System. If that occurs, the vacancy will be filled by special election.

Moving from the political to the policy side, Governor Rick Perry has unveiled a "next phase" in lawsuit reform that includes four proposals:

- a loser pays provision for "frivolous" lawsuits;
- an early dismissal mechanism for frivolous lawsuits;
- a requirement for specific legislative authority for a new cause of action (i.e., the judiciary may no longer recognize new causes of action in the development of the common law); and
- an expedited discovery and trial process for claims between \$10,000 and \$100,000.

We also expect that the Legislature will revisit a number of issues that were not resolved in 2009 and which have been the subject of interim committee charges, including:

- the *Borg-Warner* standard as it applies to mesothelioma claims;
- court oversight of arbitration decisions, particularly in consumer contexts;
- the adequacy of workers' compensation lifetime income benefits for severely injured workers;
- anti-idemnity legislation;
- owner and contractor-controlled insurance programs; and
- paid or incurred.¹

Moreover, with a budget shortfall currently estimated in the \$18-20 billion range, we expect that taxes on legal services or, more likely, an increase in the attorney occupation tax may be considered as part of a package of revenue measures to close the gap. While the leadership has publicly and repeatedly indicated that no new taxes will be imposed, it remains to be seen whether a shortfall of this magnitude can be resolved without a revenue bill. We will closely monitor this situation and respond appropriately.

The TADC Legislative Committee, which meets monthly, has provided oral and written testimony on a number of these issues during the interim, and TADC has participated actively in meetings with other groups and legislators during the interim. We have also made constructive and positive recommendations, particularly with regard to the arbitration and paid or incurred issues. Clearly, the civil justice system continues to be a focus of intensive legislative interest. The TADC leadership may call upon you during the legislative session to contact your local state senator and representative on a specific issue. If you get one of these calls, please respond as soon as you can. Ultimately, we rely on you to help us get the word to members of the Legislature about issues that affect the practice of law and the judicial system. Thank you in advance for your willingness to assist us in this crucially important work.

Back the TADC PAC

If you have not yet made a contribution to the TADC PAC, now is the time! With only six weeks to go until the November election, the TADC PAC will soon make contributions to qualified judicial and legislative candidates, regardless of party affiliation, who we believe will best serve the people of Texas in the offices to which they are elected. The TADC PAC seeks to make a significant impact in a limited number of races, rather than to spread our limited resources too broadly. Please help us make as big a difference as we can by making your PAC contribution today. [CLICK HERE](#) for a PAC Contribution form.

*It's not too late to register for the
2010 TADC Annual Meeting/50th Anniversary
Hyatt Hill Country Resort ~ San Antonio, Texas
September 22-26, 2010*

A program for the practicing trial lawyer:

- *What Defense Attorneys Do Wrong*
- *Tips for the Courtroom: Practical Advice for the Trial Lawyer*
 - *The Good Advocate: A Perspective from the Bench*
 - *Over 11.5 hours CLE including 2.5 hours ethics*

*As well as wonderful social events and opportunities
to connect with business colleagues from around the state*

[CLICK HERE](#) for Registration Materials

During the business meeting portion of the Annual Meeting, a bylaws amendment will be offered to make the offices of Secretary/Treasurer and Assistant Secretary/Treasurer separate offices, one as Secretary and the other as Treasurer, as well as other minor clean up measures to update the bylaws. [CLICKE HERE](#) to see the proposed changes.