

Tort reform vote review is mixed ; **Proposition 12** opponents say deeper issues than medical lawsuits were hidden.

**BYLINE:** Jerry Needham, *San Antonio Express-News*

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Proponents of a controversial tort reform amendment approved by voters Saturday are painting the result as a boon, while opponents say the fallout could be nasty.

With a turnout of about 1.46 million statewide, Texans approved **Proposition 12** by about 28,500 votes to allow the Legislature to set caps on non-economic damages in civil lawsuits.

The \$13 million campaign focused on medical malpractice lawsuits and the loss of doctors due to high insurance premiums, but the Texas Legislature earlier this year already had capped non-economic damages in such cases at \$750,000.

The cap went into effect Sept. 1, but the proposition amends the state constitution to prevent judges from striking down the cap.

"This is an important victory for health care in Texas and will help restore balance to the medical liability system and ensure access to the affordable health care that Texans expect," Ray Sullivan, spokesman for the Yes on 12 campaign, said Sunday.

"The parts of Texas that have been hardest hit by frivolous lawsuits, skyrocketing medical liability premiums and limited access to health care are the same communities that pushed **Proposition 12** across the finish line," Sullivan said. "Some of the biggest margins of victory were in South Texas, a region of the state that knows all too well the health crisis Texas has faced."

The counties containing Dallas, Houston and Austin voted down the proposition by almost 60,000 votes. But San Antonio, Fort Worth, El Paso, Corpus Christi, Lubbock, Brownsville and most suburban counties supported the measure. The results in smaller counties were mixed.

Opponents of the measure were a diverse group of constituencies - crime prevention and law enforcement groups, senior citizens, children's advocates, educators and environmentalists.

"Even with the passage of **Proposition 12**, these organizations are going to continue to work diligently to protect consumers' rights and all Texans'

constitutional rights," said Dan Lambe, spokesman for Texans Against **Proposition 12**.

"The proponents tried to make the issue about medical malpractice as much as they could and hide the deeper issues behind **Proposition 12**.

"Contrary to state statistics, the insurance industry and proponents of **Proposition 12** continued to try to scare voters about the loss of doctors. South Texas was hit very hard with that message and clearly it impacted some voters."

State Sen. **Jeff Wentworth**, R-San Antonio, who voted for non-economic limits in medical liability cases but against sending **Proposition 12** to the voters, said he was disappointed that it passed.

He said the best way to get lower medical malpractice premiums is to get rid of the few physicians responsible for most of the medical malpractice lawsuits.

"I just say the people of Texas got snookered," he said, adding that voters gave a "free rein to any future legislature to expand that liability limit, be it for drunk driving, defectively designed products that may maim or kill or any number of other things."

Proponents say that though the proposition could take away constitutional rights from juries and give them to the Legislature, it also includes some measure of protection.

"What **Proposition 12** did was raise the bar for future limits because if legislatures in the future choose to enact limits in other kinds of civil lawsuits, they will have to do so by a three-fifths majority in each House instead of a simple majority," said Rossanna Salazar, a spokeswoman for Yes on 12.