



COWLES & THOMPSON

*Attorneys & Counselors*

# Texas Supreme Court Metrics: New Numbers, New Perspectives

Presented by Mike Northrup  
DBA Appellate Law Section  
December 14, 2017

# Data now readily available

**CASE: 17-0235**

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**Case:** 17-0235  
**Date Filed:** 03/24/2017  
**Case Type:** Petition for Review originally filed as 53.7(f)  
**Style:** BRET RADCLIFFE, ROBERT RADCLIFFE, AND MAMBA MINERALS, LLC  
**v.:** TIDAL PETROLEUM, INC.

## APPELLATE BRIEFS

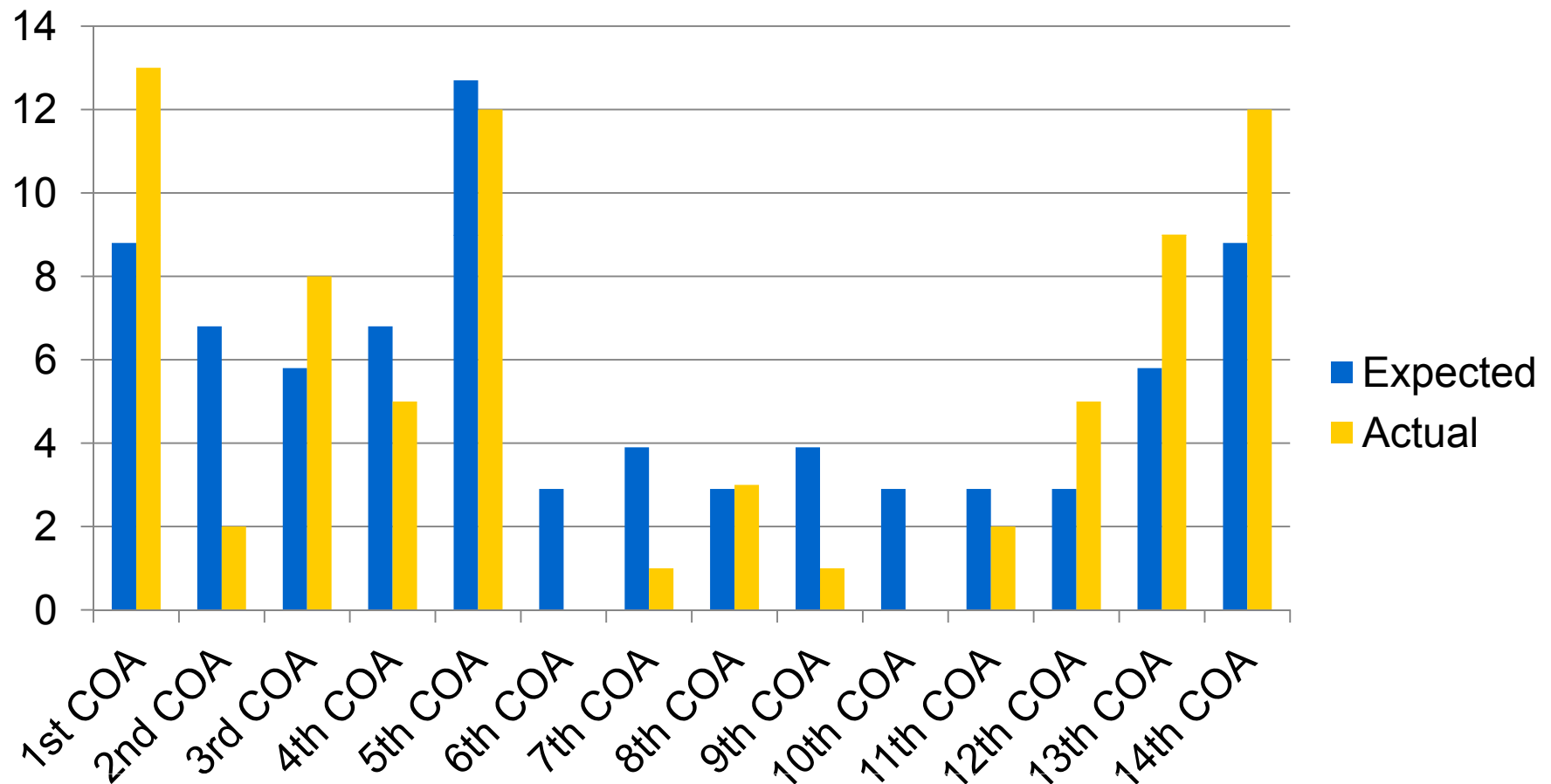
| Date ▾     | Event Type           | Description | Remarks  | Document  |
|------------|----------------------|-------------|--|---|
| 10/26/2017 | Reply to Response    | Petitioner  | Reply to Response to Petition for Review filed on behalf of Bret Radcliffe, et al. | <a href="#">[ PDF/347 KB ]</a>  |
| 10/10/2017 | Response to Petition | Respondent  | Response to Petition for Review filed on behalf of Tidal Petroleum, Inc.           | <a href="#">[ PDF/1.57 MB ]</a>   |
| 05/24/2017 | Petition for Review  | Petitioner  | Petition for Review filed on behalf of Bret Radcliffe, et al.                      | <a href="#">[ PDF/6.67 MB ]</a><br><a href="#">[ PDF/44 KB ]</a> Notice |

<http://www.courts.state.tx.us/>

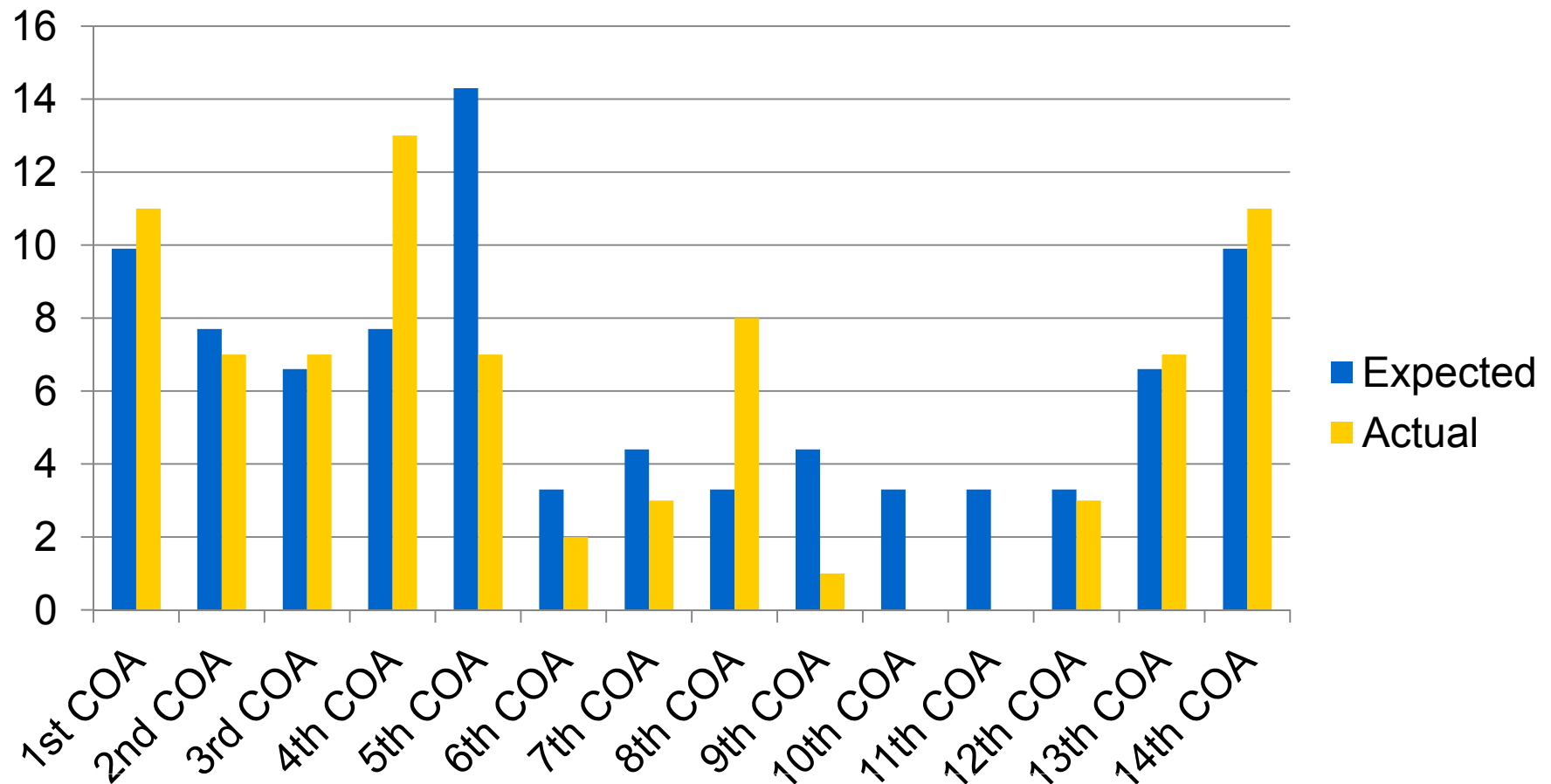
# Review by appellate court

- **14 courts of appeals**
- **80 justices**
- **Docket equalization attempts to keep each justice's workload roughly the same**

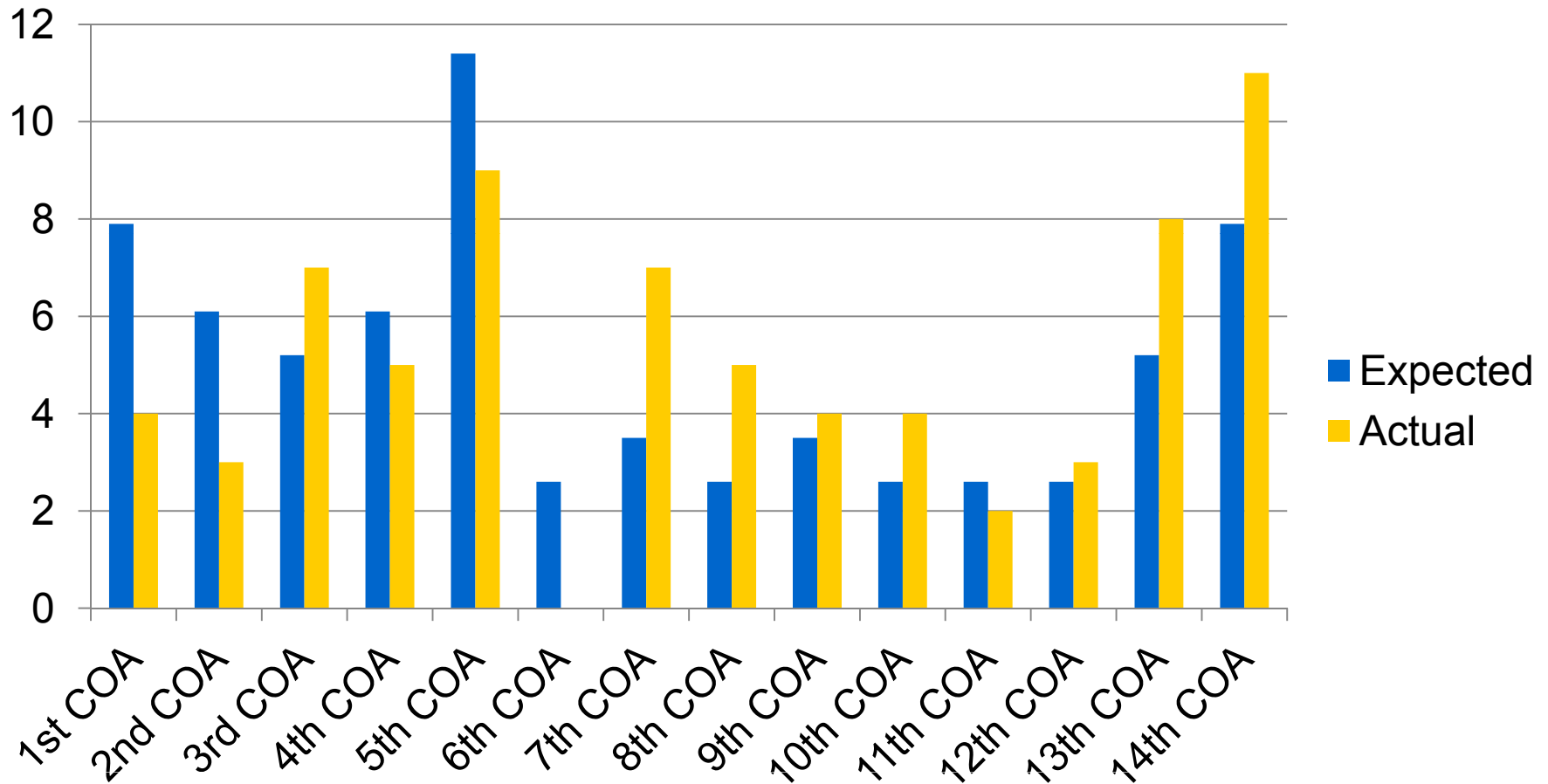
# Expected vs. Actual cases reviewed 2014



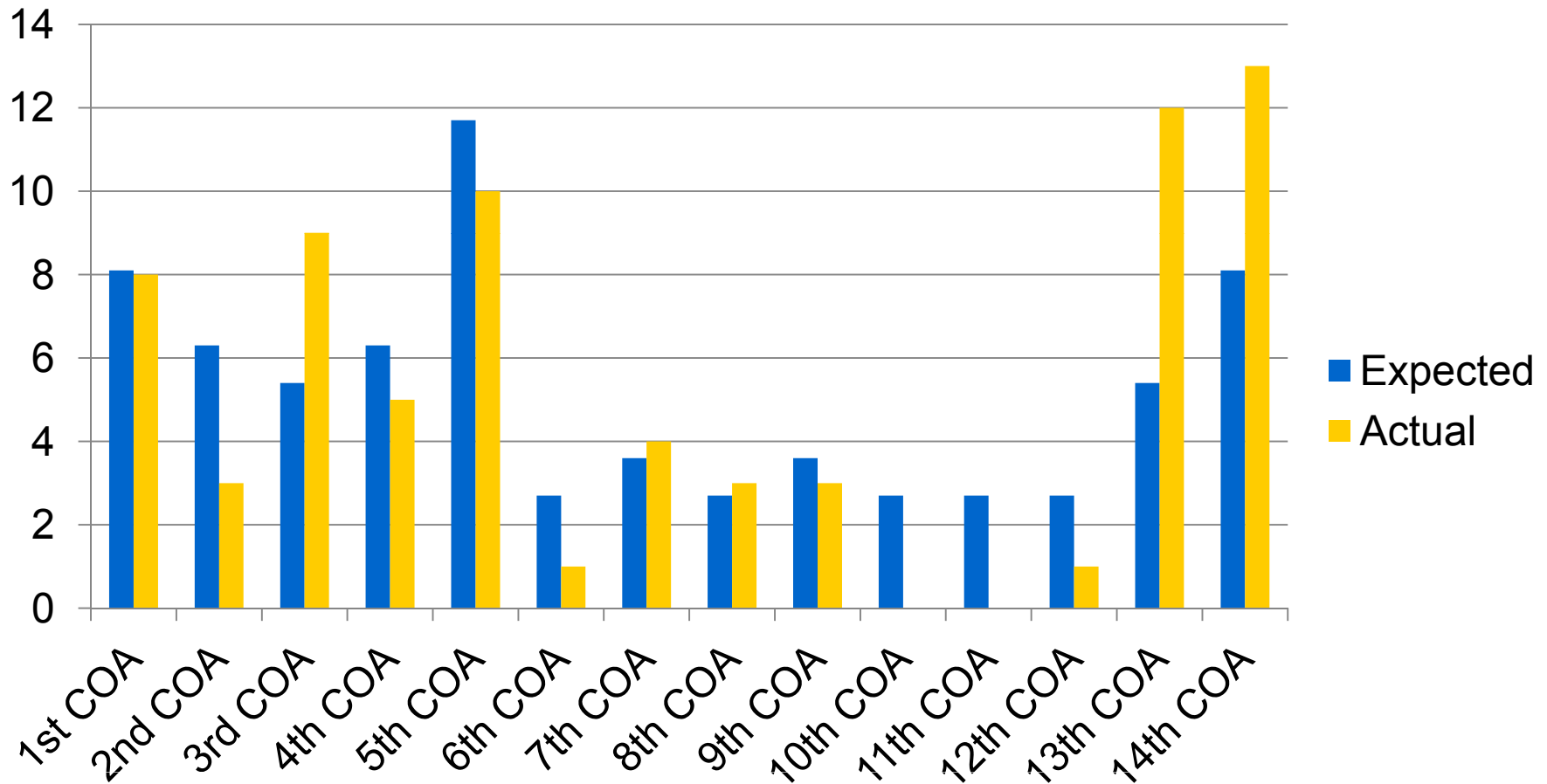
# Expected vs. Actual cases reviewed 2015



# Expected vs. Actual cases reviewed 2016

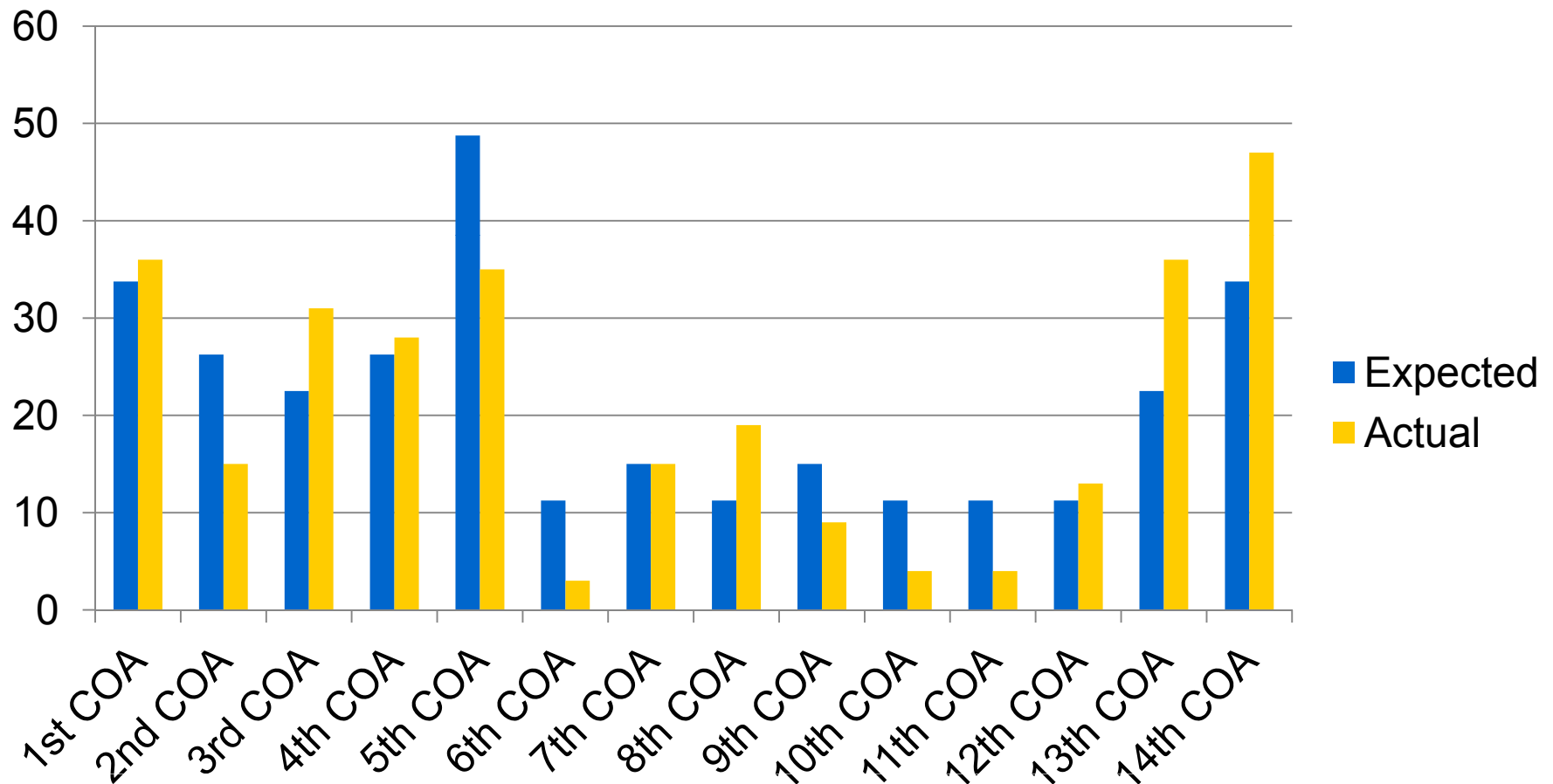


# Expected vs. Actual cases reviewed 2017



\*2017 data through Dec. 8, 2017

# Expected vs. Actual cases reviewed Aggregated (2014-17)



\*2017 data through Dec. 8, 2017.



# Memorandum Opinion vs. Opinion

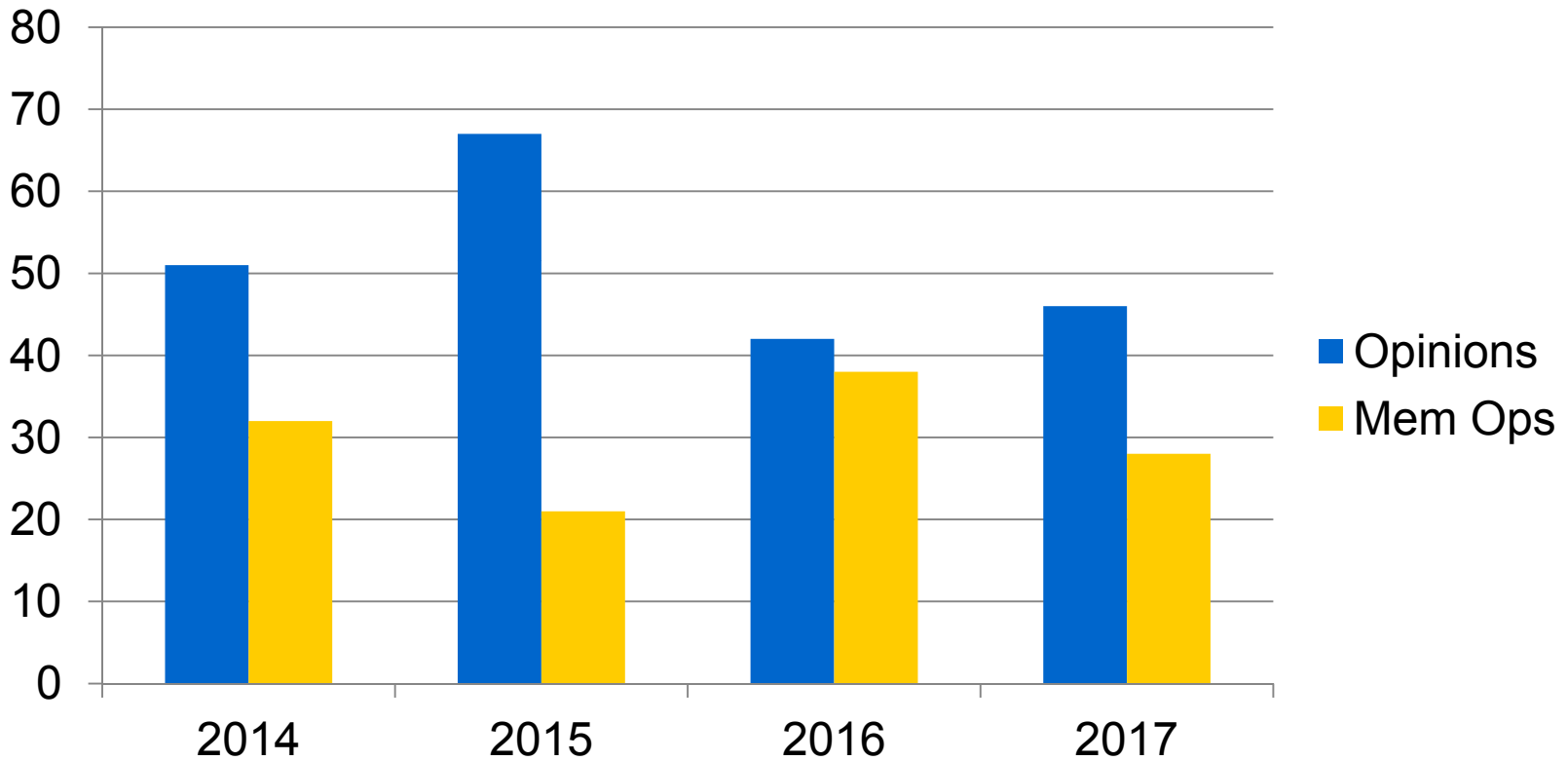
- **TRAP 53.2(d)**
  - The statement of facts must contain “the citation for the court of appeals opinion”

# Memorandum opinions

- “If the issues are settled...”
- It may not be designated MO if the author of a concurrence or dissent opposes
- It must be designated MO unless:
  - Establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur
  - Involves issues of constitutional law or other legal issue important to the jurisprudence
  - Criticizes existing law
  - Resolves an apparent conflict

**TRAP 47.4**

# Causes taken from Opinion vs. Memorandum Opinions



\* 2017 data is through December 8, 2017

# Causes taken from Opinion vs. Memorandum Opinions (percentage)

|      | Opinion Percentage | Mem. Op. Percentage |
|------|--------------------|---------------------|
| 2014 | 61%                | 39%                 |
| 2015 | 76%                | 24%                 |
| 2016 | 53%                | 47%                 |
| 2017 | 62%                | 38%                 |

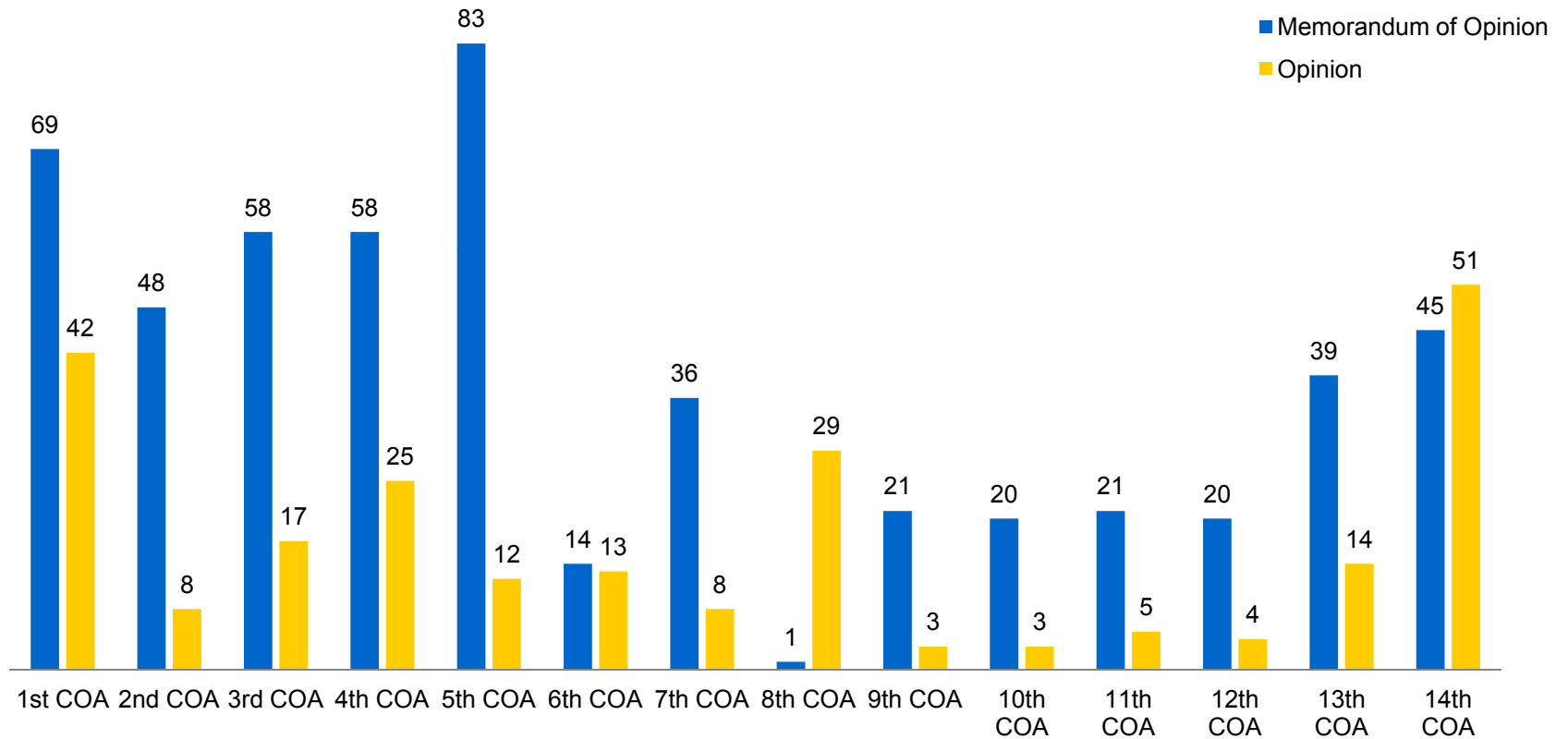
\*2017 data is through Dec. 8, 2017

# Causes taken from Opinion vs. Memorandum Opinions (percentage) excluding mandamus

|      | Opinion Percentage | Mem. Op. Percentage |
|------|--------------------|---------------------|
| 2014 | 68%(61%)           | 32%(39%)            |
| 2015 | 79%(76%)           | 21%(24%)            |
| 2016 | 59% (53%)          | 41%(47%)            |
| 2017 | 65%(62%)           | 35%(38%)            |
|      |                    |                     |

\*2017 data through Dec. 8, 2017

# Total populous of Petitions disposed (2017)



\*Data runs through Dec. 8, 2017

# Comparison of Opinions/Mem. Ops presented by petition with those granted

|  | “Opinion” | “Memorandum Opinion” |
|--|-----------|----------------------|
| Percent of ALL petitions according to whether COA decision is an “Opinion” vs. “Mem. Op.”        | 30.5      | 69.5                 |
| Percentage of GRANTED petitions according to whether COA decision is an “Opinion” vs. “Mem. Op.” | 59.8%     | 40.2%                |

\*Data runs from Jan. 1, 2017, through Dec. 8, 2017

# Per Curiams

|      | Total Opinions | Per Curiams | PC Affirmances | PC Reversals | PC Mandamus |
|------|----------------|-------------|----------------|--------------|-------------|
| 2014 | 88             | 28 (31%)    | 1              | 27           | 7           |
| 2015 | 91             | 34 (37%)    | 1              | 33           | 5           |
| 2016 | 84             | 23 (27%)    | 2              | 23           | 8           |
| 2017 | 71             | 10 (14%)    | 0              | 10           | 0           |

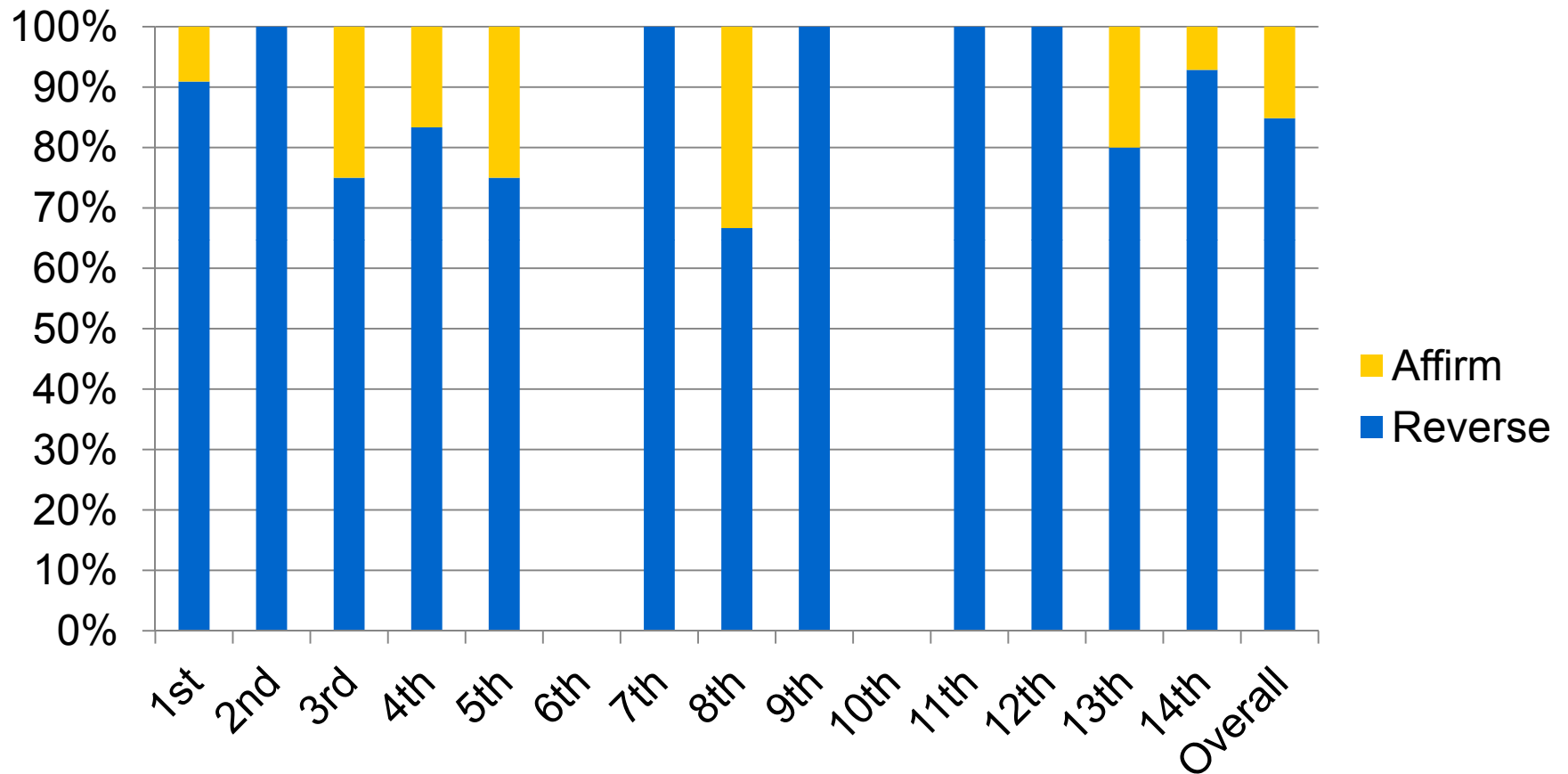
\*2017 data is through Dec. 8, 2017



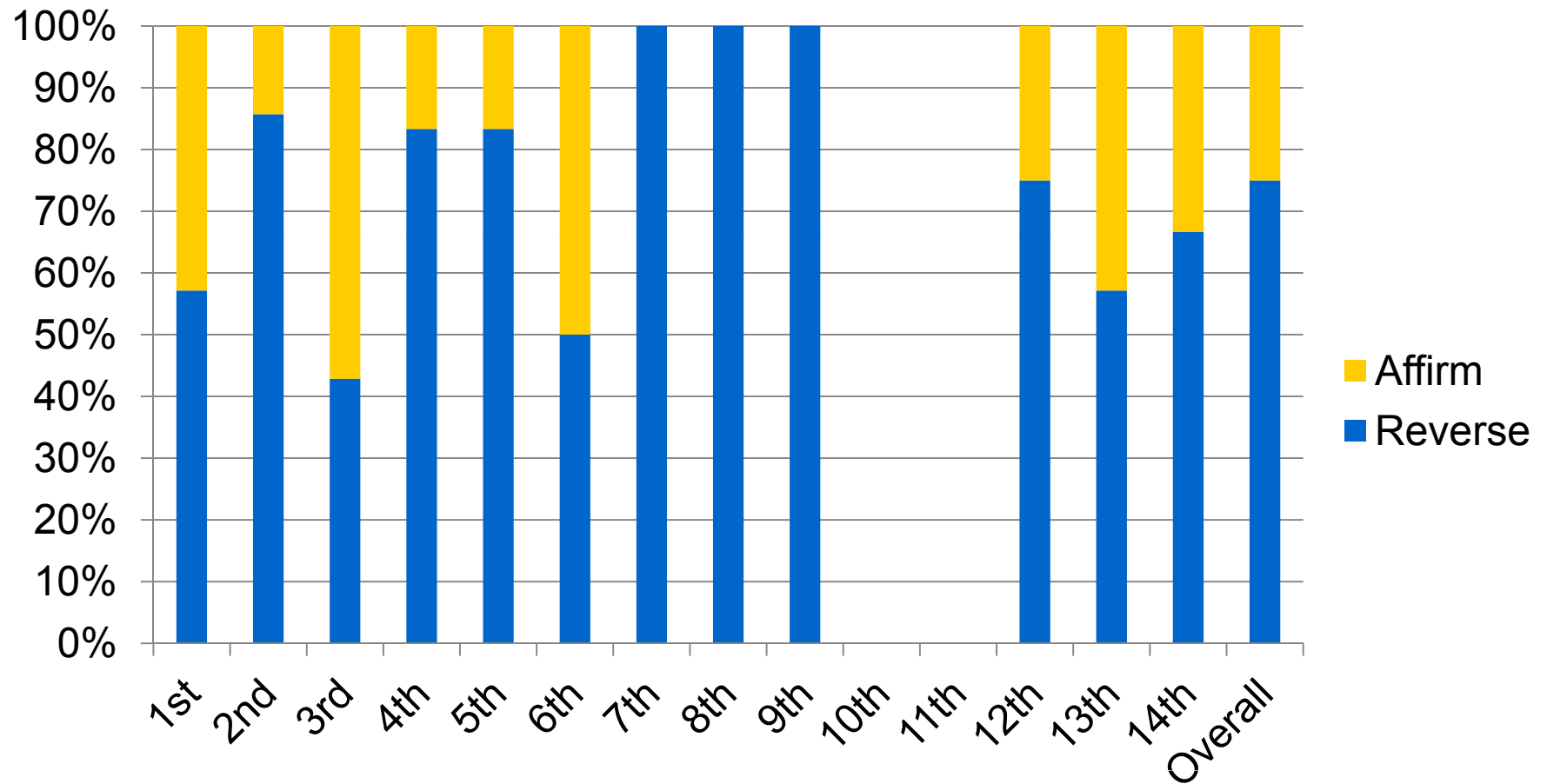
# Vulnerable 5-4 Majorities?

- 2017      *Helix Energy Solutions v. Gold*
- 2016      *Sampson v. UT*
  - *Morath v. Sterling City ISD*
  - *McGinnes Indus. v. The Phoenix*
- 2014      *Union Carbide v. Synetzke*
  - *In re Ford Motor Company*
  - *Bostic v. Georgia-Pacific*
  - *Nath v. Texas Children's Hospital*
  - *In re John Doe a/k/a Trooper*
  - *King Fisher Marine v. Tamez*

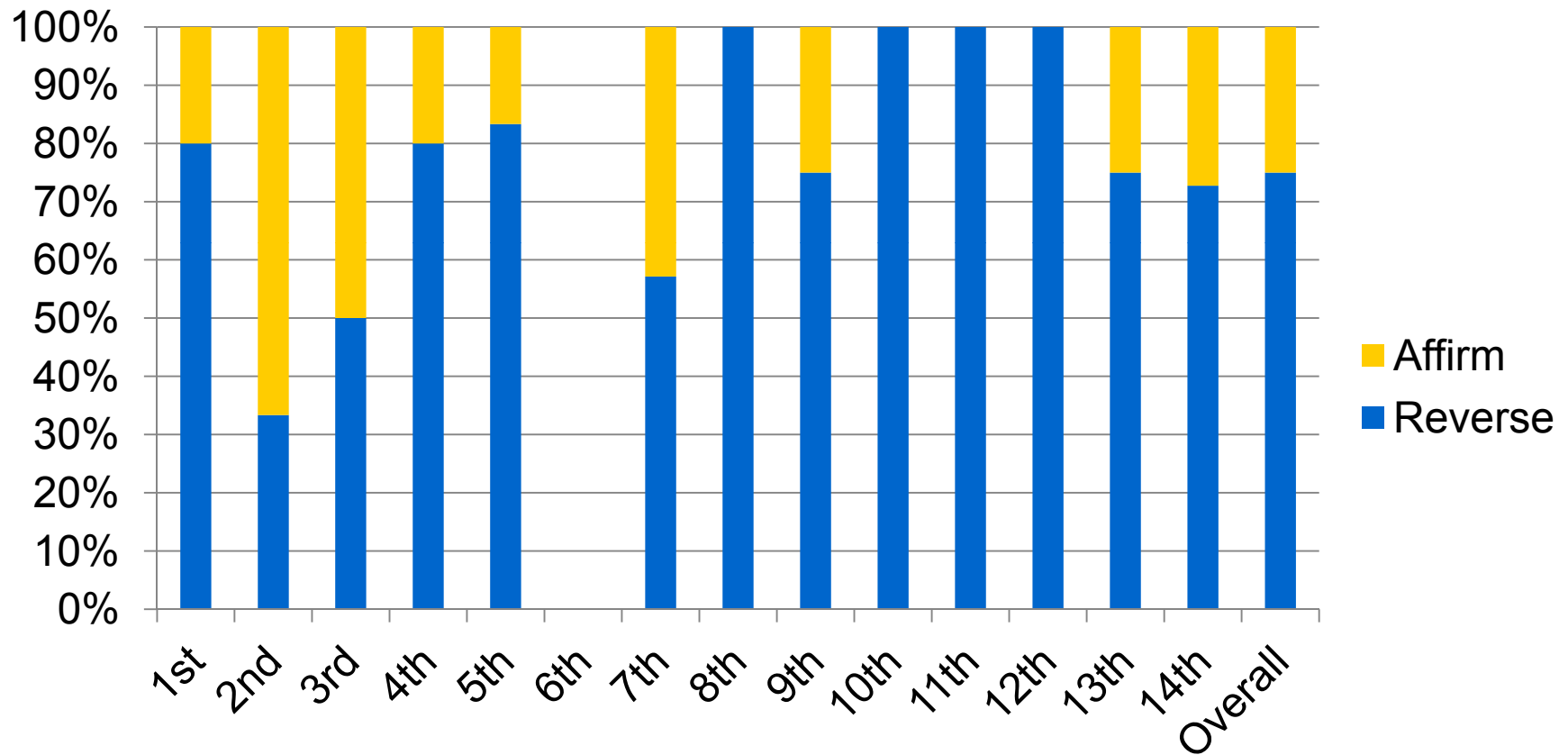
# Reversal rates by COA (2014)



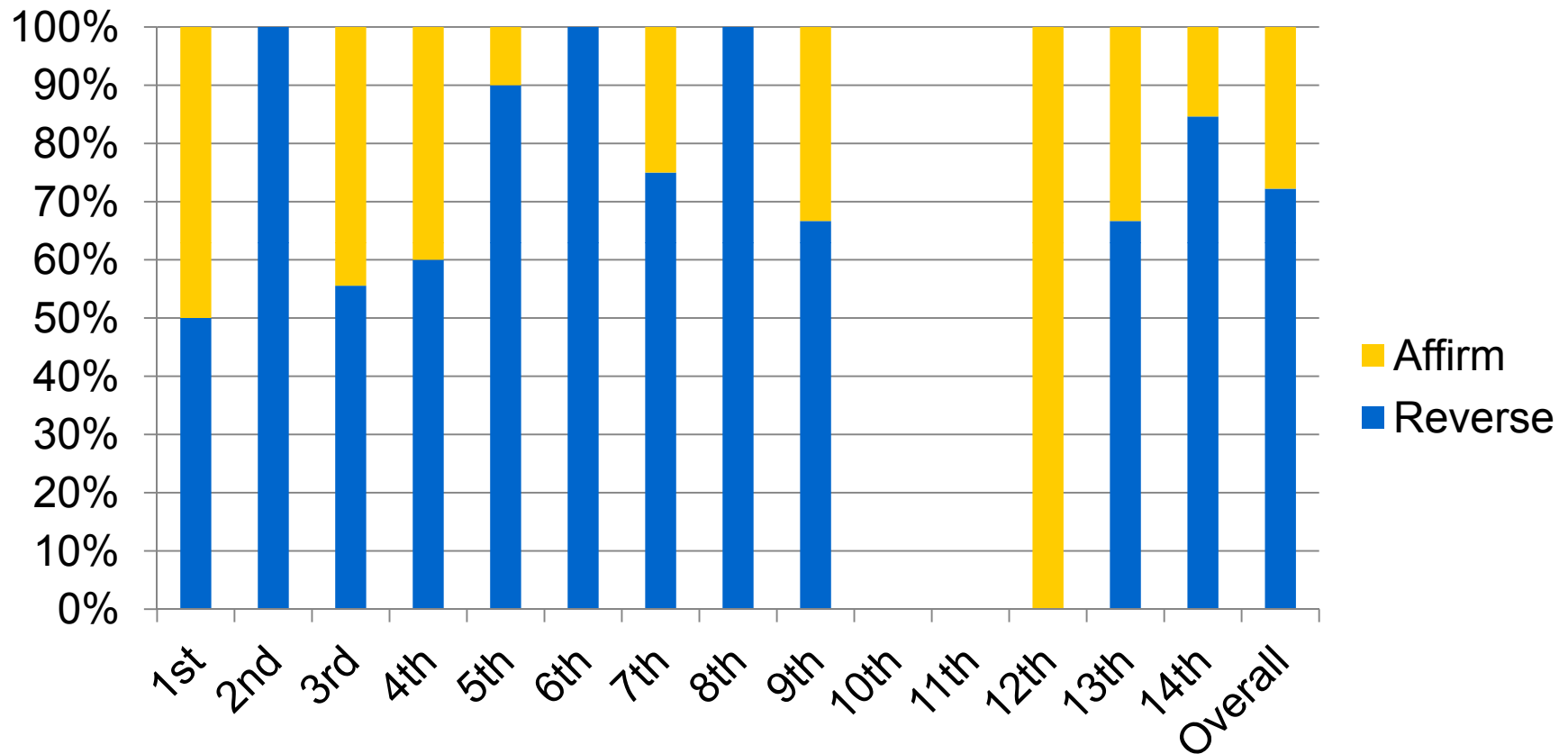
# Reversal rates by COA (2015)



# Reversal rates by COA (2016)

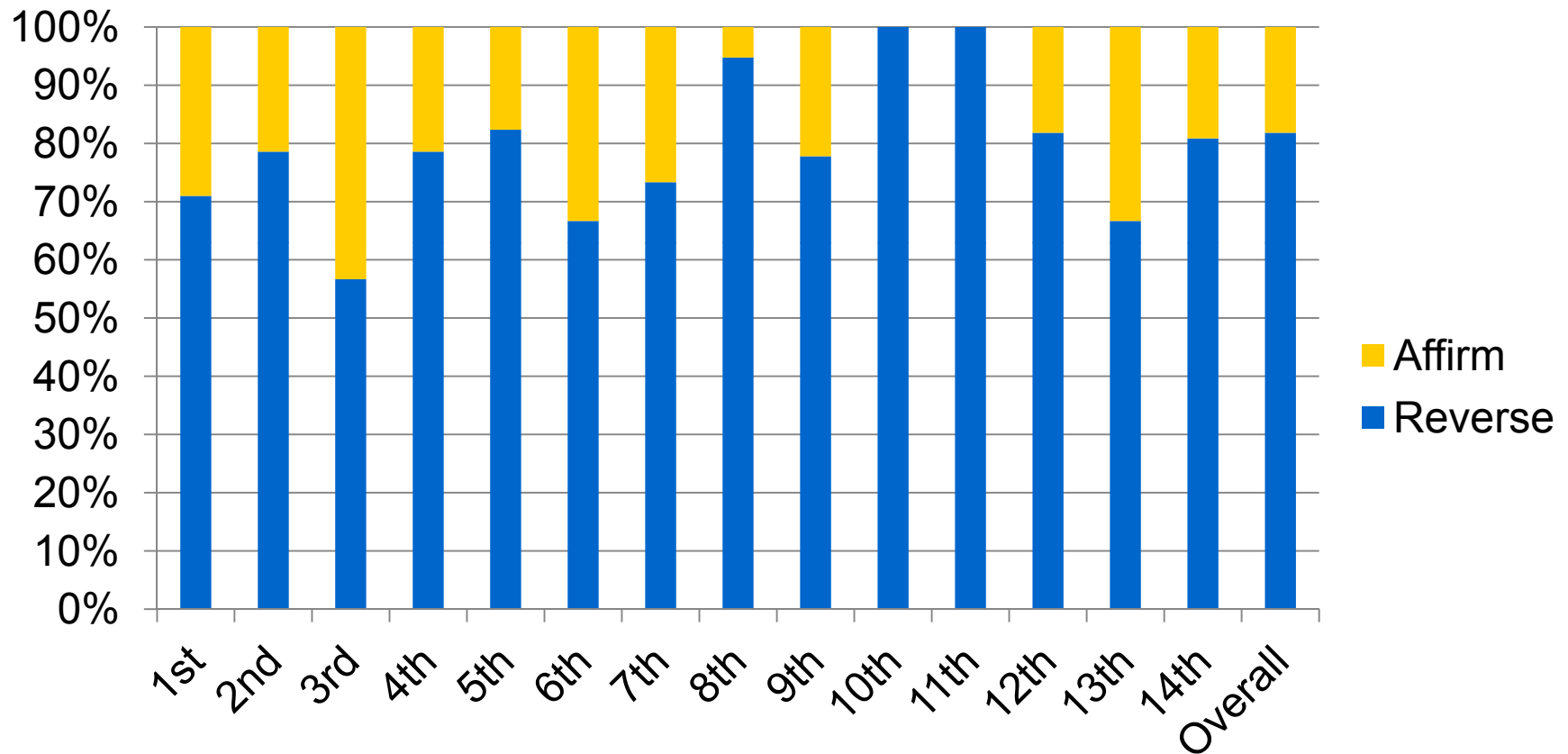


# Reversal rates by COA (2017)



\*2017 data runs through Dec. 8, 2017

# Aggregate Reversal rates by COA (2014-17)



\*2017 data runs through Dec. 8, 2017

# Supreme Court Review by County

- **254 Counties in Texas**
- **Most populous counties (2010 Census)**
  - Harris—4.6 million
  - Dallas—2.6 million
  - Tarrant—2.0 million
  - Bexar—1.9 million
  - Travis—1.2 million
  - Collin—939,585
  - Hidalgo—849,843
  - El Paso—837,918

# Review by County (2014-2017)

| County  | Population  | Numbers reviewed |
|---------|-------------|------------------|
| Harris  | 4.6 million | 63               |
| Dallas  | 2.6 million | 30               |
| Tarrant | 2.0 million | 14               |
| Bexar   | 1.9 million | 17               |
| Travis  | 1.2 million | 32               |
| Collin  | 939,585     | 4                |
| Hidalgo | 849,843     | 8                |
| El Paso | 837, 918    | 9                |

Counties below 100,000 that appear to have higher than expected review include Angelina (2), Coryell (2), Cherokee (2), Val Verde (2), Hale (3), Houston (2), Hutchinson (2), Zavala (2), Hemphill (2), and Upton (2)

\*2010 census data.