

# The Biggest Texas Rulings Of 2024: A Midyear Report

By **Spencer Brewer**

Law360 (August 16, 2024, 10:03 PM EDT) -- In the first half of 2024, Texas has already seen a bevy of major decisions, including a \$1.4 billion settlement in the Lone Star State's suit over Facebook's alleged biometric data collection, a ruling that will ban gender-affirming care for minors, and the conclusion of a long-running securities case against Texas Attorney General Ken Paxton.

Here's a look at some of the biggest decisions that have happened in Texas so far this year.

## Texas Justices Back Ban on Gender Affirming Care for Minors

The Texas Supreme Court in June upheld a state law that **bans gender-affirming care** for transgender youths, blocking medical treatments such as hormone therapies, puberty blockers and transition surgeries.

The Texas Legislature passed the law and Gov. Greg Abbott signed it in 2023. Before it took effect, five families with transgender youth, along with two LGBTQ+ organizations and several doctors, sued to block the law, saying it violates the Texas Constitution. A lower court judge ordered a temporary injunction in August 2023 and the state appealed.

In its 8-1 decision, the Texas Supreme Court **wiped out the lower court's preliminary injunction**.

"On direct appeal of the temporary injunction, we do not attempt to identify the most appropriate treatment for a child suffering from gender dysphoria," the opinion said. "That is a complicated question hotly debated by medical experts and policymakers throughout this country and the world."

The decision, written by Justice Rebeca Huddle, said that while parents have a fundamental interest in overseeing the care of their children free from government interference, the court's precedents show that the interest "is not absolute."

The matter involves new and previously unconsidered questions about the appropriate line between parental autonomy and the Legislature's authority to regulate the practice of medicine on others, the decision adds.

The high court said it concluded that "the legislature made a permissible, rational policy choice to limit the types of available medical procedures for children, particularly in light of the relative nascency of both gender dysphoria and its various modes of treatment and the legislature's express constitutional authority to regulate the practice of medicine."

Therefore, the statute does not unconstitutionally deprive parents of their rights, the opinion says.

"The court said that this law really doesn't fall within a constitutionally protected area," Randy Gordon, executive professor at the Texas A&M School of Law and managing partner of Duane Morris LLP's Dallas and Fort Worth offices, said in an interview with Law360.

The appeal was on a temporary injunction, potentially leaving room for an attack on the statute itself on federal constitutional grounds, he said.

Among the plaintiffs are the parents of five children. Two of them, aged 12 and 15, had been taking puberty blockers before S.B. 14 took effect, with the 15-year-old also taking the estrogen medication

estradiol. Two others, aged 15 and 16, had been taking testosterone, and the fifth child, aged 9, planned to take puberty blockers when she reached puberty, per the opinion.

The case is State of Texas et al. vs. Loe et al., case number 23-0697, before the Texas Supreme Court.

### **Texas, Meta Ink \$1.4 Billion Settlement Over Facebook Biometric Data Collection**

Texas and Meta Inc. **reached a historic settlement** in July after Texas accused the social media giant of illegally collecting Facebook users' biometric data through its now-discontinued facial recognition feature.

Texas Attorney General Ken Paxton and McKool Smith, which also represents Texas, said that the deal is "the largest settlement ever obtained from an action brought by a single state." The specifics of the settlement were announced Tuesday after the parties requested a 30-day stay in late May to finalize the deal.

"Companies that operate in Texas must be held accountable for their actions, particularly when it puts the privacy of Texans at risk. We're grateful to have had the opportunity to work with the Office of the Attorney General, and we appreciate how the court handled this lawsuit," McKool Smith attorneys Sam Baxter and Jennifer Truelove said in a written statement.

Paxton claimed that deal was the largest privacy settlement the attorney general's office has ever secured, and marks the first lawsuit and settlement obtained under the state's Capture or Use of Biometric Identifier Act. The law bars a company from using a person's biometric identifiers, such as retina, fingerprint or facial geometry, for commercial purposes.

Paxton sued Facebook's parent company in February 2022 in Texas state court, accusing it of violating CUBI by not asking for Facebook users' consent before collecting their data. The state also alleged Meta unlawfully disclosed the data to third parties and didn't get rid of the data in compliance with CUBI's time frame.

The site used facial recognition for more than a decade before the company announced it would stop using the system in November 2021. That announcement came after a California federal judge approved a \$650 million class settlement in a suit **alleging the technology violated** Illinois' biometric privacy law.

Texas' suit, meanwhile, came after the state investigated Facebook over the technology in 2020.

The case is State of Texas v. Meta Platforms Inc. f/k/a Facebook Inc., case number 22-0121, in the 71st District Court in Harrison County, Texas.

### **Astroworld Death Claims Close as 9-Year-Old's Family Settles**

The family of the youngest Astroworld victim **settled their case in May**, capping the wrongful death litigation stemming from a crowd crush at the 2021 music festival.

Nine-year-old Ezra Blount and nine others died as a 50,000-person crowd rushed forward on Nov. 5, 2021, after rapper Travis Scott took the stage. The families of 21-year-old Axel Acosta and 16-year-old Brianna Rodriguez were among the first to reach settlements with Scott and other defendants. The remaining cases in the multidistrict litigation are injury claims.

Attorneys for the plaintiffs told the court during a series of hearings this year that the festival planners oversold the concert by more than 15,000 tickets, ignored warnings about crowd control and gave into Scott's "demand" to be the only person to perform on his stage, contributing to the crowd crush.

The defendants, however, insisted that they took the appropriate steps to mitigate risk.

A case brought by the family of 23-year-old Madison Dubiski was scheduled to be the first in the sprawling multidistrict litigation to be tried, starting May 7, but an appeal by Apple Inc. halted it.

Counsel for the Dubiski family informed the court of its settlement with concert promoter Live Nation Entertainment, Apple and the operators of NRG Park in Houston, the concert venue, during a hearing May 8.

Apple, which had exclusive livestreaming rights to Scott's performance, and the Dubiski family then told a state appeals court they were negotiating "the terms of a settlement in principle."

Scott was previously ordered to face trial following summary judgment hearings in April. More than 4,000 individuals filed claims in the MDL after the concert. Attorneys told Harris County District Judge Kristen Brauchle Hawkins at a status conference earlier this month that they were prepared to go to trial later this year with a group of injury plaintiffs if the Blount family settled.

The Blount case is Treston Blount et al. vs. Live Nation Entertainment et al., case number 2021-73451, in the 11th District Court of Harris County, Texas. The MDL master file is In re: Astroworld Festival Litigation, case number 2021-79885, in the 11th District Court of Harris County, Texas.

### **Ken Paxton Cuts Deal To End Decadelong Securities Fraud Case**

Attorney General Ken Paxton **cut a deal** with state prosecutors in March to end a securities fraud case against him that has stretched nearly a decade.

The deal, known as a pretrial intervention, includes \$271,000 in restitution, community service and 15 hours of legal ethics training, attorneys said at a news conference after a 10-minute hearing in front of Harris County District Judge Andrea Beall. The deal did not include an admission of guilt.

Paxton's 2015 indictment charged him with two first-degree felonies and one third-degree felony in connection with allegations that he didn't register as an investment adviser and misled investors in a technology company about whether he would be receiving commissions.

The charges stem from Paxton's activities before he was elected as the state's top legal adviser, but while he was an elected state representative. He was accused of soliciting \$600,000 in investments for McKinney, Texas-based Servery Inc. without disclosing that he would earn commissions on the investments and misrepresenting that he had invested money in the company.

Paxton has until September 2025 to comply with the terms of the agreement and **will be supervised** by special prosecutors Brian W. Wice of Brian Wice Law and Jed R. Silverman of The Law Offices of Jed Silverman. That supervision will include regular Zoom meetings between Wice, Silverman, Paxton and his lawyers, attorneys said.

"What made this deal radically different from the one that was offered six weeks ago is that in a typical criminal case, victims are seldom ever made whole," Wice said at the time. "But in this case, we were able to do exactly that."

Silverman likewise said that "it is no small thing" that the victims of the case will receive nearly \$300,000 from the attorney general.

### **Winter Storm Uri Pricing Upheld By Texas Supreme Court**

The Texas Supreme Court found in June that the Public Utility Commission of Texas was acting within its authority when it set a single price for electricity at the market cap during 2021's winter storm Uri, overturning a blockbuster decision by a lower court that upheld its two pricing orders.

In two decisions, the state's high court **reversed an appellate court decision** that struck down the Public Utility Commission of Texas' order directing the Electric Reliability Council of Texas, which operates the state's electric grid, to set a \$9,000 per megawatt-hour cap on electricity for several days in February 2021, representing a nearly 30,000% increase over normal prices. The court separately ruled that the order wasn't a competition rule under the Administrative Procedure Act, dismissing one challenge entirely.

In a 30-page opinion in the main pricing order dispute, led by Luminant Energy Co. LLC, the high court wrote that the Third Court of Appeals' decision overturning the pricing orders — issued when

the state was on the brink of a total grid collapse — doesn't comport with the "whole-text canon." That canon, codified through several of the court's previous decisions, requires statutes to be read in harmony, not isolation, the court wrote.

"The canon does not support the court of appeals' analysis or conclusion. Applying it yields the opposite result," Chief Justice Nathan L. Hecht wrote for the court. "Instead of treating Sections 39.001 and 39.151 as conflicting, the court should have asked whether they can be harmonized within the context and framework of the entire statute, giving effect to both. The answer is yes."

In its second decision over the pricing orders challenged by electric providers RWE Renewables Americas LLC and TX Hereford Wind LLC, Justice Debra Lehrmann wrote for the court that the pricing orders can't be classified as competition rules and thus are not available for judicial review.

There is instead a process, albeit "painstaking," defined by ERCOT, the court wrote.

That process includes commenting on proposed orders and rules for review by an ERCOT subcommittee. In certain instances, ERCOT makes protocols and the commission adopts them.

The pricing order the commission ultimately approved "was a ratification decision that simply allowed protocol revisions, already developed and adopted by ERCOT in accordance with its own detailed procedures, to take effect," meaning it was not a rule under the Administrative Procedure Act, the court wrote.

The cases are Public Utility Commission of Texas v. Luminant Energy Co. LLC, case number 23-0231, and Public Utility Commission of Texas v. RWE Renewables Americas LLC et al., case number 23-0555, in the Supreme Court of Texas.

--Editing by Jay Jackson Jr.