

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—Tex. Crim. App.: Paxton pretrial habeas petition refused, \(Oct. 12, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Mark S. Nelson, J.D.](#)

Texas Attorney General Ken Paxton may have won a reprieve last week in the SEC's federal securities fraud case against him, but he appears to have run out of luck in his effort to get the Texas Court of Criminal Appeals to hear his pretrial habeas claims about the state case against him. State prosecutors charged Paxton a year ago with three felony counts, including one count of rendering services without registering as an investment adviser and two counts of securities fraud. The Court of Criminal Appeals has now refused Paxton's recent petition for discretionary review of a lower court opinion regarding pretrial habeas (*Ex Parte Warren Kenneth Paxton, Jr.*, October 12, 2016).

Paxton argued that part of the state's case was preempted by federal law and that he had been charged with a non-existent crime. Paxton also disputed the lower court's interpretation of the mental state required under Texas Securities Act Section 29I (felony law regarding unregistered investment advisers or investment adviser representatives). Moreover, Paxton faulted the lower court's partial application of the Supreme Court's *Central Hudson* commercial speech opinion regarding Section 29I. Paxton's petition also addressed whether factual disputes exist over one entity's dual SEC-state registration and he questioned the lack of randomness in the "volunteer" grand jury.

The state's reply countered each of Paxton's assertions primarily by explaining how Paxton's petition misconstrued legal precedents. In June, the en banc Texas Court of Appeals (Fifth) [concluded](#) that the trial judge properly denied Paxton's pretrial habeas request.

Last week Paxton won the "conditional" [dismissal](#) of the SEC's case alleging he committed federal securities fraud. That opinion focused on whether Paxton had a duty to disclose certain financial relationships. Despite the court's finding that Paxton did not have such a duty, the court indicated that it might allow the SEC to present additional facts before issuing a final order dismissing the case.

The case is [Nos. PD-0891, PD-0892, and PD-0893](#).

Attorneys: Philip Hilder (Hilder & Associates, P.C.) for Warren Kenneth Paxton, Jr. Brian Wice for the State of Texas.

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