

IN THE SUPREME COURT OF THE UNITED STATES

No. 18A1057

CHARLES D. SCOVILLE, APPLICANT

v.

SECURITIES AND EXCHANGE COMMISSION

APPLICATION FOR A FURTHER EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for applicant Charles D. Scoville respectfully requests an additional 28-day extension of time, to and including Friday, June 21, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case. Absent extension, the petition for a writ of certiorari would be due on May 24, following the grant of a 30-day extension on April 16. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. As applicant explained in his initial application for extension of time, this case is an enforcement action brought by the Securities and Exchange Commission ("SEC") against Traffic Monsoon LLC and applicant Charles D. Scoville, Traffic Monsoon's sole member and manager. Traffic Monsoon was an internet traffic exchange: an internet advertising business that offered to deliver "clicks" or "visits" to its customers' websites. App., infra, 3a-

4a. One of Traffic Monsoon's products was the "AdPack": a package deal, costing \$50, which included 1,000 visits to the purchaser's website and 20 clicks on its online banner ad. An AdPack purchaser was also eligible to share in Traffic Monsoon's available revenues, to a maximum of \$55 per AdPack, after fulfilling certain conditions. Id. at 4a-5a. Ninety percent of Traffic Monsoon's AdPack sales were to people outside the United States. Id. at 8a.

2. The SEC brought this civil enforcement action against applicant and Traffic Monsoon in the United States District Court for the District of Utah in July 2016. The agency alleged that AdPacks were securities, and that by selling them Traffic Monsoon was engaged in a Ponzi scheme, in violation of Sections 17(a)(1) and (3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a)(1), (3); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b); and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

The SEC sought, and the district court granted, a temporary restraining order prohibiting applicant and Traffic Monsoon from continuing to operate their business, along with ex parte orders freezing their assets and appointing a receiver. Id. at 11a. The agency then moved to convert the temporary restraining order into a preliminary injunction, and applicant moved to set aside the receivership. After a hearing, the district court granted the SEC's motion and denied applicant's. Id. at 11a.

3. In opposing the SEC's request for a preliminary injunction, applicant contended that Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act do not cover sales of AdPacks

to purchasers outside the United States. Applicant relied on Morrison v. National Australia Bank, 561 U.S. 247 (2010), in which this Court held that Section 10(b) of the Exchange Act does not apply extraterritorially. The district court rejected that argument, relying upon Section 929P(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376-2223 (2010). The district court held that Section 929P(b) had, by amending the jurisdictional provisions of the Securities Act and Exchange Act, also extended those statutes' substantive reach, thereby abrogating Morrison in SEC enforcement actions.

4. Applicant appealed from the district court's interlocutory order granting a preliminary injunction and declining to set aside the receivership, pursuant to 28 U.S.C. § 1292(a)(1) and (2). The Court of Appeals affirmed. App., infra, at 1a-37a.

The court acknowledged that this Court's precedents draw a bright line between those statutory provisions that are expressly denoted as jurisdictional, and those that go to the statute's substantive scope. Id. at 18a (discussing Arbaugh v. Y&H Corp., 546 U.S. 500 (2006)). It noted Morrison's holding that Section 10(b), by its text, only applies domestically (and dicta noting that the same analysis would apply to the Securities Act). Id. at 20a. And it recognized that the Dodd-Frank Act had "amended only the jurisdictional sections of the securities laws" and "did not make any explicit revisions to the substantive antifraud provisions themselves." Id. at 21a.

But the court did not end its analysis there. Instead, it turned its consideration to "the context and historical background

surrounding Congress's enactment" of Section 929P(b). Id. at 21a-22a. Specifically, the court examined statements by members of Congress, to the effect that the "purpose" of that amendment "was to make clear that the antifraud provisions apply extraterritorially." Id. at 23a. It also noted that Dodd-Frank was in the final stages of Congressional enactment at the time Morrison was handed down, and quoted with approval the district court's assumption "that Morrison was issued too late in the legislative process to reasonably permit Congress to react to it." Id. at 22a. Finally, the panel opined that certain language elsewhere in Dodd-Frank, including Section 929P's heading, implied that the statute's drafters intended to expand the securities acts' territorial reach. Id. at 22a-23a.

From these purported signals of Congressional intent, the Court of Appeals concluded that "Congress [had] 'affirmatively and unmistakably' indicated that the antifraud provisions of the federal securities acts apply extraterritorially when the statutory conduct-and-effects test is met." Id. at 23a. The court then examined Traffic Monsoon's foreign AdPack sales and held that they satisfied the conduct-and-effects test, and were thus covered by the antifraud statutes. Id. at 23a-24a.

5. Counsel for applicant respectfully requests a further 28-day extension of time, to and including Friday, June 21, 2019, within which to file a petition for a writ of certiorari. Under-signed counsel has had numerous unexpected engagements since applying for the previous request that have interfered with his

ability to prepare the petition and appendix. He also has proximate deadlines in other matters, including: Atlantic Richfield Company v. Christian, No. 17-1498, in which any supplemental briefs responding to the Brief for the United States as Amicus Curiae are due on May 14, and United States v. Greebel, No. 18-2667 (2d Cir.), in which the reply brief is also due on May 24.

Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

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